

AGENDA
AIR POLLUTION CONTROL BOARD
Department of Environmental Management
Indiana Government Center - South, Conference Center, Room C
402 West Washington Street
Indianapolis, Indiana

Wednesday, February 7, 2001
1:00 p.m.

A. Call to Order

1. Quorum

B. Reports

1. Deputy Commissioner
2. Assistant Commissioner

C. Rulemaking Actions

1. (a) Public Hearing regarding Final Adoption of amendments to rules 326 IAC 8-12 and 326 IAC 20 - 26 concerning national emission standards for hazardous air pollutants applicable to ship building and ship repair surface coating operations.

(b) Consideration of Final Adoption of amendments to rules 326 IAC 8-12 and 326 IAC 20-26 concerning national emission standards for hazardous air pollutants applicable to ship building and ship repair surface coating operations.
2. (a) Public Hearing regarding Preliminary Adoption of amendments to rules concerning 326 IAC 10, nitrogen oxides emissions.

(b) Consideration of Preliminary Adoption of amendments to rules concerning 326 IAC 10, nitrogen oxides emissions.
3. (a) Public Hearing regarding Final Adoption of amendments to 326 IAC 20-23, off-site waste and recovery operations; and new rules 326 IAC 20-33, pulp and paper production, noncombustion; 326 IAC 20-34, phosphoric acid manufacturing and phosphate fertilizers production; 326 IAC 20-35, tanks level 1; 326 IAC 20- 36, containers; 326 IAC 20-37, surface impoundments; 326 IAC 20-38, individual drain systems; 326 IAC 20-39, closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process; 326 IAC 20-40, equipment leaks control level 1; 326 IAC 20-41, equipment leaks control level 2 standards; 326 IAC 20-42, oil-water separators and organic-water separators; 326 IAC 20-43, storage vessels (tanks) control level 2; 326 IAC 20-44, generic maximum achievable control technology standards; 326 IAC 20-45, pesticide active ingredient; 326 IAC 20-46, mineral wool production; and 326 IAC 20-47, wool fiberglass manufacturing.

(b) Consideration of Final Adoption of amendments to 326 IAC 20-23, off-site waste and recovery operations; and new rules 326 IAC 20-33, pulp and paper production, noncombustion; 326 IAC 20-34, phosphoric acid manufacturing and phosphate fertilizers production; 326 IAC 20-35, tanks level 1; 326 IAC 20- 36, containers; 326 IAC 20-37, surface impoundments; 326 IAC 20-38, individual drain systems; 326 IAC 20-39, closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process; 326 IAC 20-40, equipment leaks control level 1; 326 IAC 20-41, equipment leaks control level 2 standards; 326 IAC 20-42, oil-water separators and organic-water separators; 326 IAC 20-43, storage vessels (tanks) control level 2; 326 IAC 20-44, generic maximum achievable control technology standards; 326 IAC 20-45, pesticide active ingredient; 326 IAC 20-46, mineral wool production; and 326 IAC 20-47, wool fiberglass manufacturing.

4. (a) Public Hearing regarding Final Adoption of new rules 326 IAC 20-30 incorporating national emissions standards for hazardous air pollutants for oil and natural gas production; 326 IAC 20-31 incorporating national emissions standards for hazardous air pollutants for natural gas transmission and storage; and 326 IAC 20-32 incorporating national standards for hazardous air pollutants for publicly owned treatment works.

(b) Consideration of Final Adoption of new rules 326 IAC 20-30 incorporating national emissions standards for hazardous air pollutants for oil and natural gas production; 326 IAC 20-31 incorporating national emissions standards for hazardous air pollutants for natural gas transmission and storage; and 326 IAC 20-32 incorporating national emissions standards for hazardous air pollutants for publicly owned treatment works.
5. (a) Public Hearing regarding Final Adoption of rule 326 IAC 20-27-1 concerning the Portland cement national emission standard for hazardous air pollutants.

(b) Consideration of Final Adoption of rule 326 IAC 20-27-1 concerning the Portland cement national emission standard for hazardous air pollutants.
6. (a) Public Hearing regarding Final Adoption of rule 326 IAC 20-28-1 concerning the hazardous waste combustor national emission standard for hazardous air pollutants

(b) Consideration of Final Adoption of rule 326 IAC 20-28-1 concerning the hazardous waste combustor national emission standard for hazardous air pollutants

D. Other Matters

1. Date and Location of Next Meeting*
March 7, 2001 at 1:00 p.m., Conference Center, Room C, Indiana Government Center South, Indianapolis, Indiana
2. Board packet information can also be retrieved via the Internet as early as one week prior to the meeting at www.state.in.us/idem/oam/airboard/

E. Adjournment

* Date and Location of Board Meetings are subject to change. For confirmation, please check with the Rules Section, Office of Air Management at (317) 233-0426 or (800) 451-6027, ext. 3-0426.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 N. Senate Avenue

P.O. Box 6015

Indianapolis, IN 46206-6015

or call (317) 233-1785 (V), Speech and hearing impaired callers may contact the agency via the Indiana Relay Service at

1-800-743-3333. Please provide a minimum of 72 hours notification.

INDEX

AIR POLLUTION CONTROL BOARD MEETING

February 7, 2001

- 5. Portland Cement NESHAP - (*Final*)**
 - S rule as preliminarily adopted and proposed for final adoption with suggested changes**
 - S rule as preliminarily adopted**
 - S response to comments from the first public hearing**
 - S fact sheet**
 - S Federal Register documents***

- 6. Hazardous Waste Combustor NESHAP - (*Final*)**
 - S rule as preliminarily adopted and proposed for final adoption with suggested changes**
 - S rule as preliminarily adopted**
 - S response to comments from the first public hearing**
 - S fact sheet**
 - S Federal Register documents; additional documents being incorporated by reference at final adoption**
 - S Federal Register documents***

***Included in a previous board packet. Federal Register documents are available on-line at www.state.in.us/ide/oam/airboard/**

SHIPBUILDING AND SHIP REPAIR

Bold and single underline = new language since preliminary adoption

Bold, strikeout and single underline = new language added at preliminary adoption to be stricken at final adoption

~~Strikeout and single underline~~ = existing language stricken since preliminary adoption

RULE AS PRELIMINARILY ADOPTED AND PROPOSED FOR FINAL ADOPTION WITH SUGGESTED CHANGES

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule LSA Document #00-69

DIGEST

Amends 326 IAC 8-12 concerning ship building and ship repair. Adds 326 IAC 20-26 to incorporate by reference federal standards for ship building and ship repair. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1737).

Second Notice of Comment Period and Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3206).

Date of First Hearing: December 6, 2000.

Proposed Rule and Notice of Second Hearing: January 1, 2001, Indiana Register (24 IR 1052).

326 IAC 8-12-2

326 IAC 8-12-4

326 IAC 8-12-5

326 IAC 8-12-6

326 IAC 8-12-7

326 IAC 20-26

SECTION 1. 326 IAC 8-12-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-2 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 2. The following marine coatings are exempt from the volatile organic compound emissions limiting requirements contained in section 4 of this rule:

- (1) Any marine coating used in volumes of less than ~~twenty (20)~~ **twenty-five (25)** gallons in any one (1) calendar year. ~~provided, however,~~ The total of all exempt coatings shall not exceed ~~four hundred (400)~~ **two hundred sixty-four (264)** gallons in any one (1) calendar year.
- (2) Any marine coating applied using a hand-held aerosol can.
- (3) Any marine coating used in a touch-up operation.

(Air Pollution Control Board; 326 IAC 8-12-2; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1751)

SECTION 2. 326 IAC 8-12-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-4 Volatile organic compound emissions limiting requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 4. (a) On and after May 1, 1996, the owner or operator of a shipbuilding or ship repair facility subject to this rule shall comply with the following VOC emissions limiting requirements:

- (1) Provisions applicable to specialty coatings are as follows:
 - (A) Special marking coatings shall not exceed a VOC content of four and eight-hundredths (4.08) pounds per gallon.
 - (B) Heat resistant and high-gloss coatings shall not exceed a VOC content of three and fifty-hundredths (3.50) pounds per gallon.
 - (C) High-temperature coatings shall not exceed a VOC content of four and seventeen-hundredths (4.17) pounds per gallon.
 - (D) Weld-through (shop) preconstruction primers shall comply with subdivisions (3) through (5).
 - (E) Any other specialty coating shall not exceed a VOC content of two and eighty-three hundredths (2.83) pounds per gallon.
- (2) During application of any general use coating ~~from May 1 through September 30~~, VOC emissions shall be limited as follows:
 - (A) The VOC content of any general use coating shall not exceed two and eighty-three hundredths (2.83) pounds per gallon, as applied.
 - (B) **From May 1 through September 30**, no thinner shall be added to any general use coating.
- (3) During application of any weld-through (shop) preconstruction primer, VOC emissions shall

be limited throughout the year as follows:

- (A) Waterbased weld-through (shop) preconstruction primer shall be used.
 - (B) The VOC content of weld-through (shop) preconstruction primer, as applied, shall not exceed zero (0).
 - (C) No cleaning material shall be used in the primer application facility.
 - (D) No thinner shall be added to the weld-through (shop) preconstruction primer.
- (4) If the owner or operator of a shipbuilding or ship repair facility determines that a waterbased weld-through (shop) preconstruction primer can no longer be used due to an operational, performance, or availability constraint associated with the waterbased weld-through (shop) preconstruction primer, the source shall do the following:
- (A) Notify the department within seven (7) days of discontinuing use of the waterbased weld-through (shop) preconstruction primer.
 - (B) Submit to the department for approval a plan for an alternative control within sixty (60) days of discontinuance. The alternative control shall consist of one (1) of the following:
 - (i) A waterbased weld-through (shop) preconstruction primer.
 - (ii) A control system with a minimum overall VOC emissions reduction efficiency of ninety-five percent (95%) that is subject to each of the following requirements:
 - (AA) The operation, maintenance, and testing requirements of 326 IAC 8-7-9.
 - (BB) The monitoring, record keeping, and reporting requirements of 326 IAC 8-7-10.
 - (C) Install the alternative control within nine (9) months of approval by the department of the plan required in clause (B).
- (5) During the time between the date when the owner or operator of the shipbuilding or ship repair facility discontinues the use of the water-based preconstruction primer and the date when the alternative control is installed, the weld-through (shop) preconstruction primer used by the owner or operator of such shipbuilding or ship repair facility shall not exceed a VOC content of five and sixty-five hundredths (5.65) pounds per gallon or the VOC content for weld-through (shop) preconstruction primer prescribed by the U.S. EPA in a final regulation establishing National Emissions Standards for Shipbuilding and Ship Repair (Surface Coating), whichever is lower.

(b) On and after May 1, 1996, a source subject to this rule shall comply with the following work practice standards:

- (1) Cleaning accessories, such as, but not limited to, paper, cloth, and rags that have been used for cleaning surfaces and equipment and that contain cleaning materials shall be stored in normally closed gasket sealed containers.
- (2) VOC-containing solvents and coatings shall be stored in normally closed sealed containers prior to use. Spent VOC-containing solvents and coatings shall be stored in normally closed gasket

sealed containers.

(3) Cleaning materials for cleaning spray equipment, including paint lines, shall not be used unless the equipment for collecting the cleaning materials and minimizing its evaporation to the atmosphere is used.

(4) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems shall be conducted in a manner that minimizes drips and spills, and any drips and spills shall be cleaned up promptly.

(5) All containers, tanks, vats, drums, and piping systems shall be free of cracks, holes, and other defects and must be closed unless materials are being added to or removed from them.

(c) The owner or operator of sources subject to this rule shall comply with the following training requirements:

(1) On or before January 1, 1996, the owner or operator shall develop a written worker training program. The training program shall be included in the compliance plan required to be submitted to the department for review by section 7(b)(1) of this rule.

(2) On or before May 1, 1996, all workers, including contractors, shall have completed a training program if they engage in any of the activities listed in subdivision (3).

(3) The training program may include training provided by the manufacturer or supplier of coatings, cleaning materials, or the application equipment thereof, and shall include written procedures, hands-on demonstration, as appropriate, and certification by the trainer of the trainee's ability to perform the task, on the following activities:

(A) Identification of appropriate coatings or cleaning materials.

(B) Preparation of coatings or cleaning materials according to coating or cleaning material manufacturer, distributor, or owner or operator's recommendations.

(C) Application of coatings or cleaning materials, or organic solvents using techniques that minimize their usage.

(D) Procedures to clean spray guns to minimize evaporation of organic solvents to the atmosphere.

(E) Work practice standards established in subsection (b).

(F) Procedures to gather, record, monitor, and report data in accordance with section 7 of this rule.

(4) Beginning in 1997, the owner or operator shall provide annual refresher training prior to May 1 to any worker performing one (1) or more of the activities listed in subdivision (3). Such training shall be appropriate to the job responsibilities of the worker.

(5) Any worker may perform one (1) or more activities listed in subdivision (3), for not more than one hundred eighty (180) days, notwithstanding the requirement of subdivision (2), provided:

(A) such untrained worker works under the supervision of a worker who meets the training requirements of subdivision (2); and

- (B) the owner or operator keeps records of:
 - (i) the date the worker was assigned to the activity;
 - (ii) the date training was completed; and
 - (iii) the name of the worker providing the supervision.
- (6) The owner or operator shall keep records of the training program. The records shall consist of the following:
 - (A) The date training was completed.
 - (B) A list of workers by name and worker activities listed in subdivision (3) in which each worker has been trained.
 - (C) A statement signed by the person providing the training certifying that the worker completed training and is proficient in the activities listed in subdivision (3) in which the worker will be engaged.

(Air Pollution Control Board; 326 IAC 8-12-4; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1753)

SECTION 3. 326 IAC 8-12-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-5 Compliance requirements

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 5. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.784 and 40 CFR 63.785*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

(b) Compliance requirements applicable to surface coating operations at a source subject to this rule are as follows:

(1) Compliance with the VOC emissions limiting requirements of section 4(a) of this rule shall be achieved on an as applied basis for each operating day for the following products:

(A) Coatings.

(B) Cleaning materials.

(2) Compliance with the work practice standards of section 4(b) of this rule shall be achieved each operating day.

(3) Compliance with the VOC emissions limiting requirements of section 4(a) of this rule shall be demonstrated using U.S. EPA Method 24*. However, in lieu of testing each container of coating for VOC content, the alternative procedures that follow may be used:

(A) If a coating as supplied by the manufacturer is applied to the substrate, in lieu of testing each container of coating using U.S. EPA Method 24*, a source subject to this rule may use the following alternative compliance procedure:

- (i) Use a certificate issued by the manufacturer certifying the VOC content for each batch of coating.
 - (ii) Notify the coating applicators that they shall not add any thinner to the coatings.
 - (iii) Specify the procedure to be used to notify the coating applicators in the compliance plan required to be submitted in section 7(b)(1) of this rule.
- (B) From May 1 through September 30, thinner may not be added to any general use coating. If a thinner is added to a coating before its application to the substrate, in lieu of testing the coating as applied using U.S. EPA Method 24*, a source subject to this rule may use the following alternative compliance procedure:
- (i) Use a certification from the coating manufacturer for each batch of that coating certifying its VOC content as supplied.
 - (ii) Record the volume of coating used.
 - (iii) Record the volume of thinner used.
 - (iv) Record the VOC content of thinner used.
 - (v) Type of coating.
- (4) In the compliance plan required to be submitted to the department by section 7(b)(1) of this rule, the source shall specify the compliance procedure or procedures allowed under subdivision (3) that it intends to use to demonstrate compliance with the VOC emissions limiting requirements of section 4(a) of this rule. If the source desires to use a compliance procedure other than one (1) of the three (3) described in subdivision (3), the source shall include in its compliance plan an application for approval by the department and the U.S. EPA of the proposed compliance procedure, subject to the following conditions:
- (A) The application shall include a demonstration that there is a definite and consistent relationship between U.S. EPA Method 24* results and the alternative procedure results.
 - (B) The source shall ensure that the coatings it uses are supplied by coating manufacturers that use the procedures in "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paints, Ink, and Other Coatings" (revised June 1986), U.S. EPA 450/3-84-019* to certify the VOC content of coatings and thinners.
 - (C) The source may use the alternative procedure during the time the application is being reviewed by the department and the U.S. EPA.
- (5) The department may test or have tested any coating for VOC content using U.S. EPA Method 24*. If there is a discrepancy between the results of testing for VOC content, Method 24 test results shall take precedence.

***These documents are incorporated by reference and copies of Method 24 of 40 CFR 60, 40 CFR 63.784, 40 CFR 63.785, and "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paints, Ink, and Other Coatings" (revised June 1986), U.S. EPA 450/3-84-019 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent**

sections of the referenced material are available from the Indiana Department of Environmental Management, Office of Air Management Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (*Air Pollution Control Board; 326 IAC 8-12-5; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1755*)

SECTION 4. 326 IAC 8-12-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-6 Test methods and procedures

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 6. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.786*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

(b) The methods and procedures set forth in 326 IAC 8-1-4, U.S. EPA Method 24* of 40 CFR 60, Appendix A, and section 5 of this rule shall be used to ensure compliance with the VOC emissions limiting requirements of section 4(a) of this rule.

*Copies of Method 24 of 40 CFR 60, Appendix A and 40 CFR 63.786 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (*Air Pollution Control Board; 326 IAC 8-12-6; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1756*)

SECTION 5. 326 IAC 8-12-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-7 Record keeping, notification, and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 7. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.787 and 40 CFR 63.788*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

- (a) (b) The following records shall be maintained at the facility for a minimum of three (3) years:
- (1) Certification of the annual training program.
 - (2) The following records for each working day of the surface coating operation:
 - (A) The following for each coating:

- (i) Trade name, manufacturer, coating category consistent with the definitions in section 3 of this rule, and applicable VOC content consistent with section 4 of this rule.
 - (ii) VOC content as supplied.
 - (iii) Certification from the coating manufacturer, MSDS, or product data sheet for each coating used.
 - (iv) Volume of coating used.
 - (v) Thinner added, if any, including the following:
 - (AA) Description.
 - (BB) VOC content.
 - (CC) Volume added.
- (B) The following for each solvent:
- (i) Description.
 - (ii) Description of use, including the following:
 - (AA) Thinning.
 - (BB) Cleanup.
 - (iii) VOC content.
 - (iv) Volume used for thinning.
 - (v) Volume used for cleanup.
- (3) Copy of the compliance plan required by subsection (b)(1).
- (4) Copy of the quarterly compliance report required by subsection (b)(2).
- ~~(b)~~ (c) Notification and reporting requirements are as follows:
- (1) On or before January 1, 1996, each source subject to this rule shall submit to the department for review a compliance plan. The department may require revisions to the compliance plan. A source may revise its compliance plan upon notifying the department in writing that a change to the compliance plan is necessary because there has been a major change in its manufacturing practices. The compliance plan shall include and address the following:
- (A) Compliance procedure and an application for using alternative demonstration procedure if the owner or operator of the shipbuilding and ship repair facility intends to use an alternative procedure to demonstrate compliance as specified in section 5 of this rule.
 - (B) Training program as specified in section 4(c) of this rule.
 - (C) Procedures to comply with record keeping, including data gathering requirements specified in subsection (a)(2).
 - (D) Procedures to comply with work practice standards of section 4(b) of this rule.
- (2) Beginning May 1, 1996, and within sixty (60) days after the end of each quarter, each source subject to this rule shall submit a quarterly compliance report. Reporting frequency may be changed to semiannually after May 1, 1997, if a source complying with the requirements of this rule requests

such change in writing and the department determines that semiannual reporting is adequate to assure compliance with this rule. The department shall examine the source's compliance records in considering such request. The quarterly report shall contain the following information:

(A) Compliance status as of the last day of the quarter for the following:

- (i) Work practice standards.
- (ii) Training program.
- (iii) Emission standards.
- (iv) Compliance procedures.
- (v) Provisions of the compliance plan.

(B) Date, duration, nature, and cause of each instance of noncompliance with the requirements listed in clause (A) and the corrective action taken.

(C) An explanation for each instance of noncompliance with the requirements listed in clause (A), including whether the noncompliance is exempt due to a state or federal provision. If there is a state or federal provision providing an exemption for the noncompliance, the basis of the exemption must be cited.

***Copies of 40 CFR 63.787 and 40 CFR 63.788 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (Air Pollution Control Board; 326 IAC 8-12-7; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1756)**

SECTION 6. 326 IAC 20-26 IS ADDED TO READ AS FOLLOWS:

Rule 26. Shipbuilding and Ship Repair Surface Coating Operations

326 IAC 20-26-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4

Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to affected sources as defined in 40 CFR 63.781*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart II*, National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Surface Coating Operations.

(c) Sources, as defined in 326 IAC 8-12-1, that are subject to this rule, may be subject to

326 IAC 8-12. Sources subject to this rule and 326 IAC 8-12-5 through 326 IAC 8-12-7 shall comply with the requirements of 40 CFR 63.784 through 40 CFR 63.788* in lieu of 326 IAC 8-12-5 through 326 IAC 8-12-7.

***Copies of 40 CFR 63, Subpart II, may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (Air Pollution Control Board; 326 IAC 20-26-1)**

RULE AS PRELIMINARILY ADOPTED

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule LSA Document #00-69

DIGEST

Amends 326 IAC 8-12 concerning ship building and ship repair. Adds 326 IAC 20-26 to incorporate by reference federal standards for ship building and ship repair. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1737).

Second Notice of Comment Period and Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3206).

Date of First Hearing: December 6, 2000.

Proposed Rule and Notice of Second Hearing: January 1, 2001, Indiana Register (24 IR 1052).

326 IAC 8-12-2

326 IAC 8-12-4

326 IAC 8-12-5

326 IAC 8-12-6

326 IAC 8-12-7

326 IAC 20-26

SECTION 1. 326 IAC 8-12-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-2 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 2. The following marine coatings are exempt from the volatile organic compound emissions limiting requirements contained in section 4 of this rule:

- (1) Any marine coating used in volumes of less than ~~twenty (20)~~ **twenty-five (25)** gallons in any

one (1) calendar year. ~~provided, however,~~ The total of all exempt coatings shall not exceed ~~four hundred (400)~~ **two hundred sixty-four (264)** gallons in any one (1) calendar year.

(2) Any marine coating applied using a hand-held aerosol can.

(3) Any marine coating used in a touch-up operation.

(Air Pollution Control Board; 326 IAC 8-12-2; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1751)

SECTION 2. 326 IAC 8-12-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-4 Volatile organic compound emissions limiting requirements

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 4. (a) On and after May 1, 1996, the owner or operator of a shipbuilding or ship repair facility subject to this rule shall comply with the following VOC emissions limiting requirements:

(1) Provisions applicable to specialty coatings are as follows:

(A) Special marking coatings shall not exceed a VOC content of four and eight-hundredths (4.08) pounds per gallon.

(B) Heat resistant and high-gloss coatings shall not exceed a VOC content of three and fifty-hundredths (3.50) pounds per gallon.

(C) High-temperature coatings shall not exceed a VOC content of four and seventeen-hundredths (4.17) pounds per gallon.

(D) Weld-through (shop) preconstruction primers shall comply with subdivisions (3) through (5).

(E) Any other specialty coating shall not exceed a VOC content of two and eighty-three hundredths (2.83) pounds per gallon.

(2) During application of any general use coating ~~from May 1 through September 30~~, VOC emissions shall be limited as follows:

(A) The VOC content of any general use coating shall not exceed two and eighty-three hundredths (2.83) pounds per gallon, as applied.

(B) **From May 1 through September 30**, no thinner shall be added to any general use coating.

(3) During application of any weld-through (shop) preconstruction primer, VOC emissions shall be limited throughout the year as follows:

(A) Waterbased weld-through (shop) preconstruction primer shall be used.

(B) The VOC content of weld-through (shop) preconstruction primer, as applied, shall not exceed zero (0).

(C) No cleaning material shall be used in the primer application facility.

(D) No thinner shall be added to the weld-through (shop) preconstruction primer.

(4) If the owner or operator of a shipbuilding or ship repair facility determines that a waterbased weld-through (shop) preconstruction primer can no longer be used due to an operational, performance, or availability constraint associated with the waterbased weld-through (shop) preconstruction primer, the source shall do the following:

(A) Notify the department within seven (7) days of discontinuing use of the waterbased weld-through (shop) preconstruction primer.

(B) Submit to the department for approval a plan for an alternative control within sixty (60) days of discontinuance. The alternative control shall consist of one (1) of the following:

(i) A waterbased weld-through (shop) preconstruction primer.

(ii) A control system with a minimum overall VOC emissions reduction efficiency of ninety-five percent (95%) that is subject to each of the following requirements:

(AA) The operation, maintenance, and testing requirements of 326 IAC 8-7-9.

(BB) The monitoring, record keeping, and reporting requirements of 326 IAC 8-7-10.

(C) Install the alternative control within nine (9) months of approval by the department of the plan required in clause (B).

(5) During the time between the date when the owner or operator of the shipbuilding or ship repair facility discontinues the use of the water-based preconstruction primer and the date when the alternative control is installed, the weld-through (shop) preconstruction primer used by the owner or operator of such shipbuilding or ship repair facility shall not exceed a VOC content of five and sixty-five hundredths (5.65) pounds per gallon or the VOC content for weld-through (shop) preconstruction primer prescribed by the U.S. EPA in a final regulation establishing National Emissions Standards for Shipbuilding and Ship Repair (Surface Coating), whichever is lower.

(b) On and after May 1, 1996, a source subject to this rule shall comply with the following work practice standards:

(1) Cleaning accessories, such as, but not limited to, paper, cloth, and rags that have been used for cleaning surfaces and equipment and that contain cleaning materials shall be stored in normally closed gasket sealed containers.

(2) VOC-containing solvents and coatings shall be stored in normally closed sealed containers prior to use. Spent VOC-containing solvents and coatings shall be stored in normally closed gasket sealed containers.

(3) Cleaning materials for cleaning spray equipment, including paint lines, shall not be used unless the equipment for collecting the cleaning materials and minimizing its evaporation to the atmosphere is used.

(4) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems shall be conducted in a manner that minimizes drips and spills, and any

drips and spills shall be cleaned up promptly.

(5) All containers, tanks, vats, drums, and piping systems shall be free of cracks, holes, and other defects and must be closed unless materials are being added to or removed from them.

(c) The owner or operator of sources subject to this rule shall comply with the following training requirements:

(1) On or before January 1, 1996, the owner or operator shall develop a written worker training program. The training program shall be included in the compliance plan required to be submitted to the department for review by section 7(b)(1) of this rule.

(2) On or before May 1, 1996, all workers, including contractors, shall have completed a training program if they engage in any of the activities listed in subdivision (3).

(3) The training program may include training provided by the manufacturer or supplier of coatings, cleaning materials, or the application equipment thereof, and shall include written procedures, hands-on demonstration, as appropriate, and certification by the trainer of the trainee's ability to perform the task, on the following activities:

(A) Identification of appropriate coatings or cleaning materials.

(B) Preparation of coatings or cleaning materials according to coating or cleaning material manufacturer, distributor, or owner or operator's recommendations.

(C) Application of coatings or cleaning materials, or organic solvents using techniques that minimize their usage.

(D) Procedures to clean spray guns to minimize evaporation of organic solvents to the atmosphere.

(E) Work practice standards established in subsection (b).

(F) Procedures to gather, record, monitor, and report data in accordance with section 7 of this rule.

(4) Beginning in 1997, the owner or operator shall provide annual refresher training prior to May 1 to any worker performing one (1) or more of the activities listed in subdivision (3). Such training shall be appropriate to the job responsibilities of the worker.

(5) Any worker may perform one (1) or more activities listed in subdivision (3), for not more than one hundred eighty (180) days, notwithstanding the requirement of subdivision (2), provided:

(A) such untrained worker works under the supervision of a worker who meets the training requirements of subdivision (2); and

(B) the owner or operator keeps records of:

(i) the date the worker was assigned to the activity;

(ii) the date training was completed; and

(iii) the name of the worker providing the supervision.

(6) The owner or operator shall keep records of the training program. The records shall consist of the following:

- (A) The date training was completed.
- (B) A list of workers by name and worker activities listed in subdivision (3) in which each worker has been trained.
- (C) A statement signed by the person providing the training certifying that the worker completed training and is proficient in the activities listed in subdivision (3) in which the worker will be engaged.

(Air Pollution Control Board; 326 IAC 8-12-4; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1753)

SECTION 3. 326 IAC 8-12-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-5 Compliance requirements

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 5. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.784 and 40 CFR 63.785*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

(b) Compliance requirements applicable to surface coating operations at a source subject to this rule are as follows:

(1) Compliance with the VOC emissions limiting requirements of section 4(a) of this rule shall be achieved on as applied basis for each operating day for the following products:

(A) Coatings.

(B) Cleaning materials.

(2) Compliance with the work practice standards of section 4(b) of this rule shall be achieved each operating day.

(3) Compliance with the VOC emissions limiting requirements of section 4(a) of this rule shall be demonstrated using U.S. EPA Method 24*. However, in lieu of testing each container of coating for VOC content, the alternative procedures that follow may be used:

(A) If a coating as supplied by the manufacturer is applied to the substrate, in lieu of testing each container of coating using U.S. EPA Method 24*, a source subject to this rule may use the following alternative compliance procedure:

(i) Use a certificate issued by the manufacturer certifying the VOC content for each batch of coating.

(ii) Notify the coating applicators that they shall not add any thinner to the coatings.

(iii) Specify the procedure to be used to notify the coating applicators in the compliance plan required to be submitted in section 7(b)(1) of this rule.

(B) From May 1 through September 30, thinner may not be added to any general use

coating. If a thinner is added to a coating before its application to the substrate, in lieu of testing the coating as applied using U.S. EPA Method 24*, a source subject to this rule may use the following alternative compliance procedure:

- (i) Use a certification from the coating manufacturer for each batch of that coating certifying its VOC content as supplied.
- (ii) Record the volume of coating used.
- (iii) Record the volume of thinner used.
- (iv) Record the VOC content of thinner used.
- (v) Type of coating.

(4) In the compliance plan required to be submitted to the department by section 7(b)(1) of this rule, the source shall specify the compliance procedure or procedures allowed under subdivision (3) that it intends to use to demonstrate compliance with the VOC emissions limiting requirements of section 4(a) of this rule. If the source desires to use a compliance procedure other than one (1) of the three (3) described in subdivision (3), the source shall include in its compliance plan an application for approval by the department and the U.S. EPA of the proposed compliance procedure, subject to the following conditions:

(A) The application shall include a demonstration that there is a definite and consistent relationship between U.S. EPA Method 24* results and the alternative procedure results.

(B) The source shall ensure that the coatings it uses are supplied by coating manufacturers that use the procedures in "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paints, Ink, and Other Coatings" (revised June 1986), U.S. EPA 450/3-84-019* to certify the VOC content of coatings and thinners.

(C) The source may use the alternative procedure during the time the application is being reviewed by the department and the U.S. EPA.

(5) The department may test or have tested any coating for VOC content using U.S. EPA Method 24*. If there is a discrepancy between the results of testing for VOC content, Method 24 test results shall take precedence.

*Copies of Method 24 of 40 CFR 60, **40 CFR 63.784**, **40 CFR 63.785**, and "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paints, Ink, and Other Coatings" (revised June 1986), U.S. EPA 450/3-84-019 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced material are available from the Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (*Air Pollution Control Board; 326 IAC 8-12-5; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1755*)

SECTION 4. 326 IAC 8-12-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-6 Test methods and procedures

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 6. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.786*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

(b) The methods and procedures set forth in 326 IAC 8-1-4, U.S. EPA Method 24* of 40 CFR 60, Appendix A, and section 5 of this rule shall be used to ensure compliance with the VOC emissions limiting requirements of section 4(a) of this rule.

*Copies of Method 24 of 40 CFR 60, Appendix A and 40 CFR 63.786 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (*Air Pollution Control Board; 326 IAC 8-12-6; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1756*)

SECTION 5. 326 IAC 8-12-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-12-7 Record keeping, notification, and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4

Affected: IC 13-12

Sec. 7. (a) Sources subject to the requirements of this rule and the requirements of 326 IAC 20-26 shall comply with the requirements of 40 CFR 63.787 and 40 CFR 63.788*, as incorporated by reference in 326 IAC 20-26, in lieu of this section.

(a) (b) The following records shall be maintained at the facility for a minimum of three (3) years:

(1) Certification of the annual training program.

(2) The following records for each working day of the surface coating operation:

(A) The following for each coating:

(i) Trade name, manufacturer, coating category consistent with the definitions in section 3 of this rule, and applicable VOC content consistent with section 4 of this rule.

(ii) VOC content as supplied.

- (iii) Certification from the coating manufacturer, MSDS, or product data sheet for each coating used.
- (iv) Volume of coating used.
- (v) Thinner added, if any, including the following:
 - (AA) Description.
 - (BB) VOC content.
 - (CC) Volume added.
- (B) The following for each solvent:
 - (i) Description.
 - (ii) Description of use, including the following:
 - (AA) Thinning.
 - (BB) Cleanup.
 - (iii) VOC content.
 - (iv) Volume used for thinning.
 - (v) Volume used for cleanup.
- (3) Copy of the compliance plan required by subsection (b)(1).
- (4) Copy of the quarterly compliance report required by subsection (b)(2).

~~(b)~~ (c) Notification and reporting requirements are as follows:

(1) On or before January 1, 1996, each source subject to this rule shall submit to the department for review a compliance plan. The department may require revisions to the compliance plan. A source may revise its compliance plan upon notifying the department in writing that a change to the compliance plan is necessary because there has been a major change in its manufacturing practices.

The compliance plan shall include and address the following:

- (A) Compliance procedure and an application for using alternative demonstration procedure if the owner or operator of the shipbuilding and ship repair facility intends to use an alternative procedure to demonstrate compliance as specified in section 5 of this rule.
 - (B) Training program as specified in section 4(c) of this rule.
 - (C) Procedures to comply with record keeping, including data gathering requirements specified in subsection (a)(2).
 - (D) Procedures to comply with work practice standards of section 4(b) of this rule.
- (2) Beginning May 1, 1996, and within sixty (60) days after the end of each quarter, each source subject to this rule shall submit a quarterly compliance report. Reporting frequency may be changed to semiannually after May 1, 1997, if a source complying with the requirements of this rule requests such change in writing and the department determines that semiannual reporting is adequate to assure compliance with this rule. The department shall examine the source's compliance records in considering such request. The quarterly report shall contain the following information:
- (A) Compliance status as of the last day of the quarter for the following:

- (i) Work practice standards.
- (ii) Training program.
- (iii) Emission standards.
- (iv) Compliance procedures.
- (v) Provisions of the compliance plan.

(B) Date, duration, nature, and cause of each instance of noncompliance with the requirements listed in clause (A) and the corrective action taken.

(C) An explanation for each instance of noncompliance with the requirements listed in clause (A), including whether the noncompliance is exempt due to a state or federal provision. If there is a state or federal provision providing an exemption for the noncompliance, the basis of the exemption must be cited.

***Copies of 40 CFR 63.787 and 40 CFR 63.788 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (Air Pollution Control Board; 326 IAC 8-12-7; filed Apr 1, 1996, 10:00 a.m.: 19 IR 1756)**

SECTION 6. 326 IAC 20-26 IS ADDED TO READ AS FOLLOWS:

Rule 26. Shipbuilding and Ship Repair Surface Coating Operations

326 IAC 20-26-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4

Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to affected sources as defined in 40 CFR 63.781*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart II*, National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Surface Coating Operations.

(c) Sources, as defined in 326 IAC 8-12-1, that are subject to this rule, may be subject to 326 IAC 8-12. Sources subject to this rule and 326 IAC 8-12-5 through 326 IAC 8-12-7 shall comply with the requirements of 40 CFR 63.784 through 40 CFR 63.788* in lieu of 326 IAC 8-12-5 through 326 IAC 8-12-7.

rap0069
Shipbuilding
February 7, 2001

***Copies of 40 CFR 63, Subpart II, may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are available from the Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. (Air Pollution Control Board; 326 IAC 20-26-1)**

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-69

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC
HEARING**

On December 6, 2000, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 8-12 and new rule 326 IAC 20-26. No comments were made at the first hearing.



Indiana Department of Environmental Management
Office of Air Management
Rule Fact Sheet
December 6, 2000

**National Emission Standards for Hazardous Air Pollutants for
Shipbuilding and Ship Repair Operations
LSA Document #00-69**

Overview

Amends volatile organic compound (VOC) rules and incorporates federal National Emission Standards for Hazardous Air Pollutants (NESHAP) rules concerning shipbuilding and ship repair.

Citations Affected

Amends 326 IAC 8-12, Shipbuilding and Ship Repair Operations in Clark, Floyd, Lake and Porter counties
Adds 326 IAC 20-26, Shipbuilding and Ship Repair Surface Coating Operations

Affected Persons

Jeffboat, LLC located in Clark County.

Potential Cost

No additional cost to the affected source. Cost savings possible by eliminating duplicative reporting.

Outreach

A meeting was held with the affected source to discuss comments made at the First Notice of Comment Period.

Description

This rule making incorporates the emission limits and standards of 40 CFR 63, Subpart II, National Emission Standard for Hazardous Air

Pollutants (NESHAP) for Shipbuilding and Ship Repair Operations and makes certain changes to Indiana's existing rule regulating VOC emissions from this source category. IDEM has a second rule making in process, LSA Document #000-44, the Sunset Reauthorization rule as required by IC 13-14-9.5. In this rule making, 326 IAC 8-12 was commented upon, causing an overlap in these two rule processes. IDEM has moved the comments from the sunset rule and has responded to the comment in this rule making.

This NESHAP applies to each new and existing shipbuilding and ship repair surface coating operation located at facilities that are major sources of hazardous air pollutants (HAP). Major sources of HAPs are also subject to IDEM's Title V operating permit program.

IDEM has identified one source in Clark County, Jeffboat LLC, as being subject to the NESHAP. Jeffboat is also subject to 326 IAC 8-12, VOC rule for ship building and ship repair. In an effort to streamline some of the overlapping requirements identified by the source between the HAP and VOC rules, IDEM proposes that the source meet the more stringent of the two rules.

In response to a request from Jeffboat to increase operational flexibility, IDEM proposes to increase the quantity of any single exempt

coating allowed by 326 IAC 8-12-2 from twenty gallons per year to twenty-five gallons per year. This amount is less than the fifty-two gallons allowed by the NESHAP. To assure that air quality is not compromised, IDEM is also proposing to reduce the total annual amount of all exempt coatings to less than two hundred sixty-four gallons instead of the four hundred gallons allowed in the state rule. This will result in a decrease of the total amount of all exempt coatings used on an annual basis. This will assure that overall VOC emissions will remain at the same level or decrease.

action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Suzanne Whitmer, Rule Development Section, Office of Air Management, (or extension 2-8229 or dial (317) 232-8229. Technical information can be obtained by calling Pat Daniel, Program Planning and Policy Section at extension 3-0429 or 317-233-0429.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with federal rules and guidance.

IDEM Contact

Additional information regarding this rulemaking

resin to dry by evaporation without a chemical reaction. Lacquers are resolvable in their original solvent.

Metalized epoxy coating—A coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

Mold release—A coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

Nonstructural adhesive—An adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

Optical anti-reflection coating—A coating with a low reflectance in the infrared and visible wavelength ranges, which is used for anti-reflection on or near optical and laser hardware.

Part marking coating—Coatings or inks used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

Pretreatment coating—An organic coating that contains at least 0.5 percent acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

Rain erosion-resistant coating—A coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

Rocket motor bonding adhesive—An adhesive used in rocket motor bonding applications.

Rocket motor nozzle coating—A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

Rubber-based adhesive—Quick setting contact cements that provide a strong, yet flexible, bond between two mating surfaces that may be of dissimilar materials.

Scale inhibitor—A coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

Screen print ink—Inks used in screen printing processes during fabrication of decorative laminates and decals.

Seal coat maskant—An overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

Sealant—A material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

Silicone insulation material—Insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

Solid film lubricant—A very thin coating consisting of a binder system containing as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying surfaces.

Specialized function coatings—Coatings that fulfill extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

Structural autoclavable adhesive—An adhesive used to bond load-carrying aerospace components that is cured by heat and pressure in an autoclave.

Structural nonautoclavable adhesive—An adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or for other critical functions, such as nonstructural bonding in the proximity of engines.

Temporary protective coating—A coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

Thermal control coating—Coatings formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

Touch-up and Repair Coating—A coating used to cover minor coating imperfections appearing after the main coating operation.

Wet fastener installation coating—A primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

Wing coating—A corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

[63 FR 15026, Mar. 27, 1998]

Subpart HH [Reserved]

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

SOURCE: 60 FR 64336, Dec. 15, 1995, unless otherwise noted.

§ 63.780 Relationship of subpart II to subpart A of this part.

Table 1 of this subpart specifies the provisions of subpart A of this part

that apply to owners and operators of sources subject to the provisions of this subpart.

§ 63.781 Applicability.

(a) The provisions of this subpart apply to shipbuilding and ship repair operations at any facility that is a major source.

(b) The provisions of this subpart do not apply to coatings used in volumes of less than 200 liters (52.8 gallons) per year, provided the total volume of coating exempt under this paragraph does not exceed 1,000 liters per year (264 gallons per year) at any facility. Coatings exempt under this paragraph shall be clearly labeled as “low-usage exempt,” and the volume of each such coating applied shall be maintained in the facility’s records.

(c) The provisions of this subpart do not apply to coatings applied with hand-held, nonrefillable, aerosol containers or to unsaturated polyester resin (i.e., fiberglass lay-up) coatings. Coatings applied to suitably prepared fiberglass surfaces for protective or decorative purposes are subject to this subpart.

(d) The provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions and continuous monitoring do not apply to this source category unless an add-on control system is used to comply with this subpart in accordance with § 63.783(c).

§ 63.782 Definitions.

Terms used in this subpart are defined in the Clean Air Act (CAA), in subpart A of part 63, or in this section as follows:

Add-on control system means an air pollution control device such as a carbon absorber or incinerator that reduces pollution in an air stream by destruction or removal prior to discharge to the atmosphere.

Affected source means any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons [gal]) annual marine coating usage that is subject to this subpart.

Air flask specialty coating means any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corro-

sion resistance and that is certified safe for use with breathing air supplies.

Antenna specialty coating means any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

Antifoulant specialty coating means any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

As applied means the condition of a coating at the time of application to the substrate, including any thinning solvent.

As supplied means the condition of a coating before any thinning, as sold and delivered by the coating manufacturer to the user.

Batch means the product of an individual production run of a coating manufacturer’s process. A batch may vary in composition from other batches of the same product.

Bitumens mean black or brown materials that are soluble in carbon disulfide and consist mainly of hydrocarbons.

Bituminous resin coating means any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

Certify means, in reference to the volatile organic compounds (VOC) content or volatile organic hazardous air pollutants (VOHAP) content of a coating, to attest to the VOC content as determined through analysis by Method 24 of appendix A to 40 CFR part 60 or through use of forms and procedures outlined in appendix A of this subpart, or to attest to the VOHAP content as determined through an Administrator-approved test method. In the case of conflicting results, Method 24 of Appendix A to 40 CFR part 60 shall take precedence over the forms and procedures outlined in appendix A to this subpart for the options in which VOC is used as a surrogate for VOHAP.

Coating means any material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film.

Cold-weather time period means any time during which the ambient temperature is below 4.5°C (40°F) and coating is to be applied.

Container of coating means the container from which the coating is applied, including but not limited to a bucket or pot.

Cure volatiles means reaction products which are emitted during the chemical reaction which takes place in some coating films at the cure temperature. These emissions are other than those from the solvents in the coating and may, in some cases, comprise a significant portion of total VOC and/or VOHAP emissions.

Epoxy means any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

Exempt compounds means specified organic compounds that are not considered VOC due to negligible photochemical reactivity. Exempt compounds are specified in 40 CFR 51.100(s).

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

General use coating means any coating that is not a specialty coating.

Hazardous air pollutants (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Heat resistant specialty coating means any coating that during normal use must withstand a temperature of at least 204°C (400°F).

High-gloss specialty coating means any coating that achieves at least 85 percent reflectance on a 60 degree meter when tested by ASTM Method D523 (incorporation by reference—see § 63.14).

High-temperature specialty coating means any coating that during normal use must withstand a temperature of at least 426°C (800°F).

Inorganic zinc (high-build) specialty coating means a coating that contains 960 grams per liter (8 pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than 2 mil dry film thickness.)

Major source means any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAP.

Maximum allowable thinning ratio means the maximum volume of thinner that can be added per volume of coating without violating the standards of § 63.783(a), as determined using Equation 1 of this subpart.

Military exterior specialty coating or Chemical Agent Resistant Coatings ("CARC") means any exterior topcoat applied to military or U.S. Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

Mist specialty coating means any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

Navigational aids specialty coating means any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

Nonskid specialty coating means any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

Nonvolatiles (or volume solids) means substances that do not evaporate readily. This term refers to the film-forming material of a coating.

Normally closed means a container or piping system is closed unless an operator is actively engaged in adding or removing material.

Nuclear specialty coating means any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-89 [incorporation by reference—see § 63.14]), relatively easy to decontaminate (ASTM D4256-89 [reapproved 1994] [incorporation by reference—see § 63.14]), and resistant to various chemicals to which

the coatings are likely to be exposed (ASTM D3912–80 [incorporation by reference—see § 63.14]). [For nuclear coatings, see the general protective requirements outlined by the U.S. Nuclear Regulatory Commission in a report entitled “U.S. Atomic Energy Commission Regulatory Guide 1.54” dated June 1973, available through the Government Printing Office at (202) 512–2249 as document number A74062–00001.]

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Organic zinc specialty coating means any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (8 pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

Pleasure craft means any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to or chartered by individuals for such purposes shall be considered a pleasure craft.

Pretreatment wash primer specialty coating means any coating that contains a minimum of 0.5 percent acid, by mass, and is applied only to bare metal to etch the surface and enhance adhesion of subsequent coatings.

Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating) means any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered “general use” coatings.)

Rubber camouflage specialty coating means any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

Sealant for thermal spray aluminum means any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of 1 dry mil.

Ship means any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. For purposes of this subpart, pleasure crafts and offshore oil and gas drilling platforms are not considered ships.

Shipbuilding and ship repair operations means any building, repair, repainting, converting, or alteration of ships.

Special marking specialty coating means any coating that is used for safety or identification applications, such as markings on flight decks and ships’ numbers.

Specialty coating means any coating that is manufactured and used for one of the specialized applications described within this list of definitions.

Specialty interior coating means any coating used on interior surfaces aboard U.S. military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

Tack specialty coating means any thin film epoxy coating applied at a maximum thickness of 2 dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

Thinner means a liquid that is used to reduce the viscosity of a coating and that evaporates before or during the cure of a film.

Thinning ratio means the volumetric ratio of thinner to coating, as supplied.

Thinning solvent: see Thinner.

Undersea weapons systems specialty coating means any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

Volatile organic compounds (VOC) is as defined in § 51.100(s) of this chapter.

Volatile organic hazardous air pollutants (VOHAP) means any compound listed in or pursuant to section 112(b) of the CAA that contains carbon, excluding metallic carbides and carbonates. This definition includes VOC listed as HAP and exempt compounds listed as HAP.

Weld-through preconstruction primer (specialty coating) means a coating that provides corrosion protection for steel during inventory, is typically applied at less than 1 mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters [0.5 inch]), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

§ 63.783 Standards.

(a) No owner or operator of any existing or new affected source shall cause or allow the application of any coating to a ship with an as-applied VOHAP content exceeding the applicable limit given in Table 2 of this subpart, as determined by the procedures described in § 63.785 (c)(1) through (c)(4). For the compliance procedures described in § 63.785 (c)(1) through (c)(3), VOC shall be used as a surrogate for VOHAP, and Method 24 of Appendix A to 40 CFR part 60 shall be used as the definitive measure for determining compliance. For the compliance procedure described in § 63.785(c)(4), an alternative test method capable of measuring independent VOHAP shall be used to determine compliance. The method must be submitted to and approved by the Administrator.

(b) Each owner or operator of a new or existing affected source shall ensure that:

(1) All handling and transfer of VOHAP-containing materials to and from containers, tanks, vats, drums, and piping systems is conducted in a manner that minimizes spills.

(2) All containers, tanks, vats, drums, and piping systems are free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

(c) *Approval of alternative means of limiting emissions.* (1) The owner or operator of an affected source may apply to the Administrator for permission to use an alternative means (such as an add-on control system) of limiting emissions from coating operations. The application must include:

(i) An engineering material balance evaluation that provides a comparison of the emissions that would be achieved using the alternative means to those that would result from using coatings that comply with the limits in Table 2 of this subpart, or the results from an emission test that accurately measures the capture efficiency and control device efficiency achieved by the control system and the composition of the associated coatings so that the emissions comparison can be made;

(ii) A proposed monitoring protocol that includes operating parameter values to be monitored for compliance and an explanation of how the operating parameter values will be established through a performance test; and

(iii) Details of appropriate record-keeping and reporting procedures.

(2) The Administrator shall approve the alternative means of limiting emissions if, in the Administrator's judgment, postcontrol emissions of VOHAP per volume applied solids will be no greater than those from the use of coatings that comply with the limits in Table 2 of this subpart.

(3) The Administrator may condition approval on operation, maintenance, and monitoring requirements to ensure that emissions from the source are no greater than those that would otherwise result from this subpart.

§ 63.784 Compliance dates.

(a) Each owner or operator of an existing affected source shall comply within two years after the effective date of this subpart.

(b) Each owner or operator of an existing unaffected area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject

to this subpart shall comply within 1 year after the date of becoming a major source.

(c) Each owner or operator of a new or reconstructed source shall comply with this subpart according to the schedule in § 63.6(b).

[60 FR 64336, Dec. 15, 1995, as amended at 61 FR 30816, June 18, 1996]

§ 63.785 Compliance procedures.

(a) For each batch of coating that is received by an affected source, the owner or operator shall (see Figure 1 of this section for a flow diagram of the compliance procedures):

(1) Determine the coating category and the applicable VOHAP limit as specified in § 63.783(a).

(2) Certify the as-supplied VOC content of the batch of coating. The owner or operator may use a certification supplied by the manufacturer for the batch, although the owner or operator retains liability should subsequent testing reveal a violation. If the owner or operator performs the certification testing, only one of the containers in which the batch of coating was received is required to be tested.

(b)(1) In lieu of testing each batch of coating, as applied, the owner or operator may determine compliance with the VOHAP limits using any combination of the procedures described in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section. The procedure used for each coating shall be determined and documented prior to application.

(2) The results of any compliance demonstration conducted by the affected source or any regulatory agency using Method 24 shall take precedence over the results using the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section.

(3) The results of any compliance demonstration conducted by the affected source or any regulatory agency using an approved test method to determine VOHAP content shall take precedence over the results using the procedures in paragraph (c)(4) of this section.

(c)(1) *Coatings to which thinning solvent will not be added.* For coatings to which thinning solvent (or any other material) will not be added under any circumstance or to which only water is

added, the owner or operator of an affected source shall comply as follows:

(i) Certify the as-applied VOC content of each batch of coating.

(ii) Notify the persons responsible for applying the coating that no thinning solvent may be added to the coating by affixing a label to each container of coating in the batch or through another means described in the implementation plan required in § 63.787(b).

(iii) If the certified as-applied VOC content of each batch of coating used during a calendar month is less than or equal to the applicable VOHAP limit in § 63.783(a) (either in terms of g/L of coating or g/L of solids), then compliance is demonstrated for that calendar month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(2) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch as follows:

$$R = \frac{(V_s)(\text{VOHAP limit}) - m_{\text{VOC}}}{D_{\text{th}}} \quad \text{Eqn. 1}$$

where:

R=Maximum allowable thinning ratio for a given batch (L thinner/L coating as supplied);

V_s =Volume fraction of solids in the batch as supplied (L solids/L coating as supplied);

VOHAP limit=Maximum allowable as-applied VOHAP content of the coating (g VOHAP/L solids);

m_{VOC} =VOC content of the batch as supplied [g VOC (including cure volatiles and exempt compounds on the HAP list)/L coating (including water and exempt compounds) as supplied];

D_{th} =Density of the thinner (g/L).

Environmental Protection Agency

§ 63.785

If V_s is not supplied directly by the coating manufacturer, the owner or operator shall determine V_s as follows:

$$V_s = 1 - \frac{m_{\text{volatiles}}}{D_{\text{avg}}} \quad \text{Eqn. 2}$$

where:

$m_{\text{volatiles}}$ =Total volatiles in the batch, including VOC, water, and exempt compounds (g/L coating); and

D_{avg} =Average density of volatiles in the batch (g/L).

The procedures specified in § 63.786(d) may be used to determine the values of variables defined in this paragraph. In addition, the owner or operator may choose to construct nomographs, based on Equation 1 of this subpart, similar or identical to the one provided in ap-

pendix B of this subpart as a means of easily estimating the maximum allowable thinning ratio.

(ii) Prior to the first application of each batch, notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch of the coating by affixing a label to each container of coating or through another means described in the implementation plan required in § 63.787(b).

(iii) By the 15th day of each calendar month, determine the volume of each batch of the coating used, as supplied, during the previous month.

(iv) By the 15th day of each calendar month, determine the total allowable volume of thinner for the coating used during the previous month as follows:

$$V_{\text{th}} = \sum_{i=1}^n (R \times V_b)_i + \sum_{i=1}^n (R_{\text{cold}} \times V_{\text{b-cold}})_i \quad \text{Eqn. 3}$$

where:

V_{th} =Total allowable volume of thinner for the previous month (L thinner);

V_b =Volume of each batch, as supplied and before being thinned, used during non-cold-weather days of the previous month (L coating as supplied);

R_{cold} =Maximum allowable thinning ratio for each batch used during cold-weather days (L thinner/L coating as supplied);

$V_{\text{b-cold}}$ =Volume of each batch, as supplied and before being thinned, used during cold-weather days of the previous month (L coating as supplied);

i =Each batch of coating; and

n =Total number of batches of the coating.

(v) By the 15th day of each calendar month, determine the volume of thinner actually used with the coating during the previous month.

(vi) If the volume of thinner actually used with the coating [paragraph (c)(3)(v) of this section] is less than or equal to the total allowable volume of thinner for the coating [paragraph (c)(3)(iv) of this section], then compli-

ance is demonstrated for the coating for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(3) *Coatings to which the same thinning solvent will be added—group compliance.* For coatings to which the same thinning solvent (or other material) is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Designate a single thinner to be added to each coating during the month and “group” coatings according to their designated thinner.

(ii) Prior to the first application of each batch, calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating in the group using the equations in paragraph (c)(2) of this section.

(iii) Prior to the first application of each “batch,” notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch in the group by affixing a label to each

container of coating or through another means described in the implementation plan required in § 63.787(b).

(iv) By the 15th day of each calendar month, determine the volume of each batch of the group used, as supplied, during the previous month.

(v) By the 15th day of each calendar month, determine the total allowable volume of thinner for the group for the previous month using Equation 3 of this subpart.

(vi) By the 15th day of each calendar month, determine the volume of thinner actually used with the group during the previous month.

(vii) If the volume of thinner actually used with the group [paragraph (c)(3)(vi) of this section] is less than or equal to the total allowable volume of thinner for the group [paragraph (c)(3)(v) of this section], then compliance is demonstrated for the group for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(4) *Demonstration of compliance through an alternative (i.e., other than Method 24 of Appendix A to 40 CFR part 60) test method.* The owner or operator shall comply as follows:

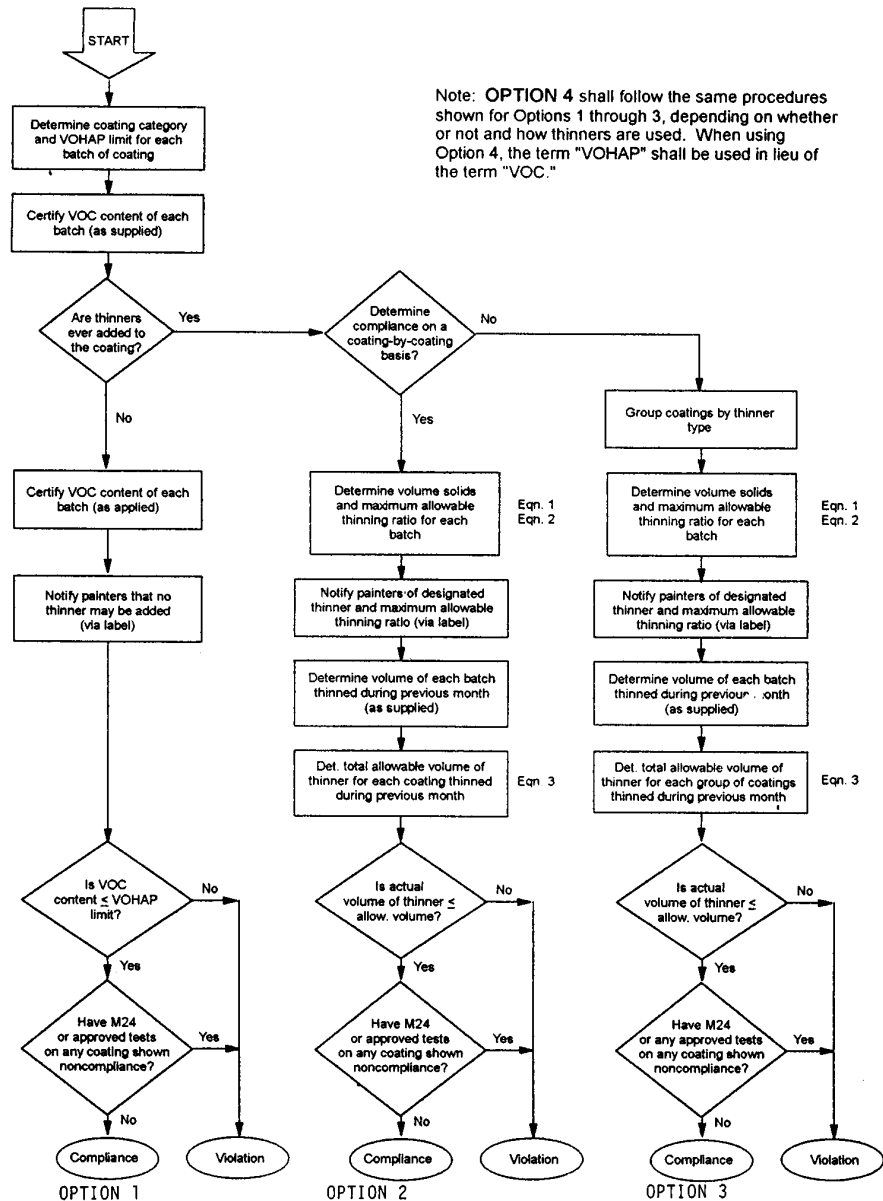
(i) Certify the as-supplied VOHAP content (g VOHAP/L solids) of each batch of coating.

(ii) If no thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(1), except that VOHAP content shall be used in lieu of VOC content.

(iii) If thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(2) or (3), except that in Equation 1 of this subpart: the term " m_{VOC} " shall be replaced by the term " m_{VOHAP} ," defined as the VOHAP content of the coating as supplied (g VOHAP/L coating) and the term " D_{th} " shall be replaced by the term " $D_{th(VOHAP)}$ " defined as the average density of the VOHAP thinner(s) (g/L).

(d) A violation revealed through any approved test method shall result in a 1-day violation for enforcement purposes. A violation revealed through the recordkeeping procedures described in paragraphs (c)(1) through (c)(4) of this section shall result in a 30-day violation for enforcement purposes, unless the owner or operator provides sufficient data to demonstrate the specific days during which noncompliant coatings were applied.

Figure 1 to §63.785 Flow diagram of compliance procedures

**§ 63.786 Test methods and procedures.**

(a) For the compliance procedures described in § 63.785(c) (1) through (c)(3),

Method 24 of 40 CFR part 60, appendix A, is the definitive method for determining the VOC content of coatings, as supplied or as applied. When a coating

or thinner contains exempt compounds that are volatile HAP or VOHAP, the owner or operator shall ensure, when determining the VOC content of a coating, that the mass of these exempt compounds is included.

(b) For the compliance procedure described in § 63.785(c)(4), the Administrator must approve the test method for determining the VOHAP content of coatings and thinners. As part of the approval, the test method must meet the specified accuracy limits indicated below for sensitivity, duplicates, repeatability, and reproducibility coefficient of variation each determined at the 95 percent confidence limit. Each percentage value below is the corresponding coefficient of variation multiplied by 2.8 as in the ASTM Method E180–93: Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals (incorporation by reference—see § 63.14).

(1) *Sensitivity.* The overall sensitivity must be sufficient to identify and calculate at least one mass percent of the compounds of interest based on the original sample. The sensitivity is defined as ten times the noise level as specified in ASTM Method D3257–93: Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography (incorporation by reference—see § 63.14). In determining the sensitivity, the level of sample dilution must be factored in.

(2) *Repeatability.* First, at the 0.1–5 percent analyte range the results would be suspect if duplicates vary by more than 6 percent relative and/or day to day variation of mean duplicates by the same analyst exceeds 10 percent relative. Second, at greater than 5 percent analyte range the results would be suspect if duplicates vary by more than 5 percent relative and/or day to day variation of duplicates by the same analyst exceeds 5 percent relative.

(3) *Reproducibility.* First, at the 0.1–5 percent analyte range the results would be suspect if lab to lab variation exceeds 60 percent relative. Second, at greater than 5 percent range the results would be suspect if lab to lab variation exceeds 20 percent relative.

(4) Any test method should include information on the apparatus, reagents

and materials, analytical procedure, procedure for identification and confirmation of the volatile species in the mixture being analyzed, precision and bias, and other details to be reported. The reporting should also include information on quality assurance (QA) auditing.

(5) Multiple and different analytical techniques must be used for positive identification if the components in a mixture under analysis are not known. In such cases a single column gas chromatograph (GC) may not be adequate. A combination of equipment may be needed such as a GC/mass spectrometer or GC/infrared system. (If a GC method is used, the operator must use practices in ASTM Method E260–91: Standard Practice for Gas Chromatography [incorporation by reference—see § 63.14].)

(c) A coating manufacturer or the owner or operator of an affected source may use batch formulation data as a test method in lieu of Method 24 of Appendix A to 40 CFR part 60 to certify the as-supplied VOC content of a coating if the manufacturer or the owner or operator has determined that batch formulation data have a consistent and quantitatively known relationship to Method 24 results. This determination shall consider the role of cure volatiles, which may cause emissions to exceed an amount based solely upon coating formulation data. Notwithstanding such determination, in the event of conflicting results, Method 24 of appendix A of 40 CFR part 60 shall take precedence.

(d) Each owner or operator of an affected source shall use or ensure that the manufacturer uses the form and procedures mentioned in appendix A of this subpart to determine values for the thinner and coating parameters used in Equations 1 and 2 of this subpart. The owner or operator shall ensure that the coating/thinner manufacturer (or supplier) provides information on the VOC and VOHAP contents of the coatings/thinners and the procedure(s) used to determine these values.

§ 63.787 Notification requirements.

(a) Each owner or operator of an affected source shall comply with all applicable notification requirements in

§ 63.9(a) through (d) and (i) through (j), with the exception that the deadline specified in § 63.9(b) (2) and (3) shall be extended from 120 days to 180 days. Any owner or operator that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall comply with the applicable requirements of § 63.9(e) through (h).

(b) *Implementation plan.* The provisions of § 63.9(a) apply to the requirements of this paragraph.

(1) Each owner or operator of an affected source shall:

(i) Prepare a written implementation plan that addresses each of the subject areas specified in paragraph (b)(3) of this section; and

(ii) Not later than one year after the effective date of this subpart, submit the implementation plan to the Administrator along with the notification required by § 63.9(b)(2) or (b)(5) of subpart A, as applicable.

(2) [Reserved]

(3) *Implementation plan contents.* Each implementation plan shall address the following subject areas:

(i) *Coating compliance procedures.* The implementation plan shall include the compliance procedure(s) under § 63.785(c) that the source intends to use.

(ii) *Recordkeeping procedures.* The implementation plan shall include the procedures for maintaining the records required under § 63.788, including the procedures for gathering the necessary data and making the necessary calculations.

(iii) *Transfer, handling, and storage procedures.* The implementation plan shall include the procedures for ensuring compliance with § 63.783(b).

(4) *Major sources that intend to become area sources by the compliance date.* Existing major sources that intend to become area sources by the December 16, 1997 compliance date may choose to submit, in lieu of the implementation plan required under paragraph (b)(1) of this section, a statement that, by the compliance date, the major source intends to obtain and comply with federally enforceable limits on their poten-

tial to emit which make the facility an area source.

[60 FR 64336, Dec. 15, 1995, as amended at 61 FR 30816, June 18, 1996]

§ 63.788 Recordkeeping and reporting requirements.

(a) Each owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in § 63.10 (a), (b), (d), and (f). Any owner that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall also comply with the applicable requirements of § 63.10 (c) and (e). A summary of recordkeeping and reporting requirements is provided in Table 3 of this subpart.

(b) *Recordkeeping requirements.* (1) Each owner or operator of a major source shipbuilding or ship repair facility having surface coating operations with less than 1000 liters (L) (264 gallons (gal)) annual marine coating usage shall record the total volume of coating applied at the source to ships. Such records shall be compiled monthly and maintained for a minimum of 5 years.

(2) Each owner or operator of an affected source shall compile records on a monthly basis and maintain those records for a minimum of 5 years. At a minimum, these records shall include:

(i) All documentation supporting initial notification;

(ii) A copy of the affected source's approved implementation plan;

(iii) The volume of each low-usage-exempt coating applied;

(iv) Identification of the coatings used, their appropriate coating categories, and the applicable VOHAP limit;

(v) Certification of the as-supplied VOC content of each batch of coating;

(vi) A determination of whether containers meet the standards as described in § 63.783(b)(2); and

(vii) The results of any Method 24 of appendix A to 40 CFR part 60 or approved VOHAP measurement test conducted on individual containers of coating, as applied.

(3) The records required by paragraph (b)(2) of this section shall include additional information, as determined by the compliance procedure(s) described

in § 63.785(c) that each affected source followed:

(i) *Coatings to which thinning solvent will not be added.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(1) shall contain the following information:

(A) Certification of the as-applied VOC content of each batch of coating; and

(B) The volume of each coating applied.

(ii) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(2) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids (nonvolatiles) in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch of the coating, as supplied, during these dates;

(D) The volume used of each batch of the coating, as supplied;

(E) The total allowable volume of thinner for each coating, including calculations; and

(F) The actual volume of thinner used for each coating.

(iii) *Coatings to which the same thinning solvent will be added—group compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(3) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch in the group, as supplied, during these dates;

(D) Identification of each group of coatings and their designated thinners;

(E) The volume used of each batch of coating in the group, as supplied;

(F) The total allowable volume of thinner for the group, including calculations; and

(G) The actual volume of thinner used for the group.

(iv) *Demonstration of compliance through an alternative (i.e., non-Method 24 in appendix A to 40 CFR part 60) test method.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(4) shall contain the following information:

(A) Identification of the Administrator-approved VOHAP test method or certification procedure;

(B) For coatings to which the affected source does not add thinning solvents, the source shall record the certification of the as-supplied and as-applied VOHAP content of each batch and the volume of each coating applied;

(C) For coatings to which the affected source adds thinning solvent on a coating-by-coating basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(ii) of this section; and

(D) For coatings to which the affected source adds thinning solvent on a group basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(iii) of this section.

(4) If the owner or operator of an affected source detects a violation of the standards specified in § 63.783, the owner or operator shall, for the remainder of the reporting period during

Environmental Protection Agency

Pt. 63, Subpt. II, Table 1

which the violation(s) occurred, include the following information in his or her records:

(i) A summary of the number and duration of deviations during the reporting period, classified by reason, including known causes for which a Federally-approved or promulgated exemption from an emission limitation or standard may apply.

(ii) Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents that the monitoring protocol failed to perform in accordance with the design of the protocol or produced data that did not meet minimum data accuracy and precision requirements, classified by reason.

(iii) Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period.

(iv) If, pursuant to paragraph (b)(4)(iii) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the monitoring report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred and:

(A) The magnitude of each deviation;
(B) The reason for each deviation;

(C) A description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence; and

(D) All quality assurance activities performed on any element of the monitoring protocol.

(c) *Reporting requirements.* Before the 60th day following completion of each 6-month period after the compliance date specified in §63.784, each owner or operator of an affected source shall submit a report to the Administrator for each of the previous 6 months. The report shall include all of the information that must be retained pursuant to paragraphs (b) (2) through (3) of this section, except for that information specified in paragraphs (b)(2) (i) through (ii), (b)(2)(v), (b)(3)(i)(A), (b)(3)(ii)(A), and (b)(3)(iii)(A). If a violation at an affected source is detected, the source shall also report the information specified in paragraph (b)(4) of this section for the reporting period during which the violation(s) occurred. To the extent possible, the report shall be organized according to the compliance procedure(s) followed each month by the affected source.

[60 FR 64336, Dec. 15, 1995, as amended at 61 FR 66227, Dec. 17, 1996]

TABLE 1 TO SUBPART II OF PART 63—GENERAL PROVISIONS OF APPLICABILITY TO SUBPART II

Reference	Applies to subpart II	Comment
63.1(a)(1)–(3)	Yes.	Subpart II clarifies the applicability of each paragraph in subpart A to sources subject to subpart II.
63.1(a)(4)	Yes.	
63.1(a)(5)–(7)	Yes.	Discusses State programs.
63.1(a)(8)	No	
63.1(a)(9)–(14) ..	Yes.	§ 63.781 specifies applicability in more detail.
63.1(b)(1)	Yes.	
63.1(b)(2)–(3)	Yes.	Additional terms are defined in § 63.782; when overlap between subparts A and II occurs, subpart II takes precedence.
63.1(c)–(e)	Yes.	
63.2	Yes.	Other units used in subpart II are defined in that subpart.
63.3	Yes.	
63.4	Yes.	Except information on control devices and control efficiencies should not be included in the application unless an add-on control system is or will be used to comply with subpart II in accordance with § 63.783(c).
63.5(a)–(c)	Yes.	
63.5(d)	Yes.	Except § 63.784(a) specifies the compliance date for existing affected sources.
63.5(e)–(f)	Yes.	
63.6(a)–(b)	Yes.	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with § 63.783(c), then these paragraphs do apply.
63.6(c)–(d)	Yes.	
63.6(e)–(f)	No	§ 63.783(c) specifies procedures for application and approval of alternative means of limiting emissions.
63.6(g)	No	

TABLE 1 TO SUBPART II OF PART 63—GENERAL PROVISIONS OF APPLICABILITY TO SUBPART II—
Continued

Reference	Applies to subpart II	Comment
63.6(h)	No	Subpart II does not contain any opacity or visible emission standards.
63.6(i)–(j)	Yes.	
63.7	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with § 63.783(c), then this section does apply.
63.8	No	
63.9(a)–(d)	Yes	§ 63.787(a) extends the initial notification deadline to 180 days. § 63.787(b) requires an implementation plan to be submitted with the initial notification.
63.9(e)	No	
63.9(f)	No	Subpart II does not contain any opacity or visible emission standards
63.9(g)–(h)	No	
63.9(i)–(j)	Yes.	§ 63.788(b)–(c) list additional recordkeeping and reporting requirements.
63.10(a)–(b)	Yes	
63.10(c)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with § 63.783(c), then this paragraph does apply.
63.10(d)	Yes.	
63.10(e)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with § 63.783(c), then this paragraph does apply.
63.10(f)	Yes.	
63.11	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with § 63.783(c), then this section does apply.
63.12–63.15	Yes.	

TABLE 2 TO SUBPART II OF PART 63.—VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS

Coating category	VOHAP limits ^{a b c}		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids ^d	
		t ≥ 4.5° C	t < 4.5° C ^e
General use	340	571	728
Specialty:			
Air flask	340	571	728
Antenna	530	1,439	
Antifoulant	400	765	971
Heat resistant	420	841	1,069
High-gloss	420	841	1,069
High-temperature	500	1,237	1,597
Inorganic zinc high-build	340	571	728
Military exterior	340	571	728
Mist	610	2,235	
Navigational aids	550	1,597	
Nonskid	340	571	728
Nuclear	420	841	1,069
Organic zinc	360	630	802
Pretreatment wash primer	780	11,095	
Repair and maint. of thermoplastics	550	1,597	
Rubber camouflage	340	571	728
Sealant for thermal spray aluminum	610	2,235	
Special marking	490	1,178	
Specialty interior	340	571	728
Tack coat	610	2,235	
Undersea weapons systems	340	571	728
Weld-through preon. primer	650	2,885	

^aThe limits are expressed in two sets of equivalent units. Either set of limits may be used for the compliance procedure described in § 63.785(c)(1), but only the limits expressed in units of g/L solids (nonvolatiles) shall be used for the compliance procedures described in § 63.785(c) (2) through (4).

^bVOC (including exempt compounds listed as HAP) shall be used as a surrogate for VOHAP for those compliance procedures described in § 63.785(c) (1) through (3).

^cTo convert from g/L to lb/gal, multiply by (3.785 L/gal)/(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.

Environmental Protection Agency

Pt. 63, Subpt. II, App. B

^dVOHAP limits expressed in units of mass of VOHAP per volume of solids were derived from the VOHAP limits expressed in units of mass of VOHAP per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.

^eThese limits apply during cold-weather time periods, as defined in § 63.782. Cold-weather allowances are not given to coatings in categories that permit less than 40 percent volume solids (nonvolatiles). Such coatings are subject to the same limits regardless of weather conditions.

[60 FR 64336, Dec. 15, 1995, as amended at 61 FR 66228, Dec. 17, 1996]

TABLE 3 TO SUBPART II OF PART 63.—SUMMARY OF RECORDKEEPING AND REPORTING REQUIREMENTS^{a b c}

Requirement	All Opts.		Option 1		Option 2		Option 3	
	Rec	Rep	Rec	Rep	Rec	Rep	Rec	Rep
Notification (§ 63.9(a)–(d))	X	X						
Implementation plan (§ 63.787(b)) ^d	X	X						
Volume of coating applied at unaffected major sources (§ 63.781(b)) ..	X							
Volume of each low-usage-exempt coating applied at affected sources (§ 63.781(c))	X	X						
ID of the coatings used, their appropriate coating categories, and the applicable VOHAP limit	X	X						
Determination of whether containers meet the standards described in § 63.783(b)(2)	X	X						
Results of M–24 or other approved tests	X	X						
Certification of the as-supplied VOC content of each batch	X							
Certification of the as-applied VOC content of each batch			X					
Volume of each coating applied			X	X				
Density of each thinner and volume fraction of solids in each batch					X	X		
Maximum allowable thinning ratio(s) for each batch					X	X	X	X
Volume used of each batch, as supplied					X	X	X	X
Total allowable volume of thinner					X	X	X	X
Actual volume of thinner used					X	X	X	X
Identification of each group of coatings and designated thinners							X	X

^aAffected sources that comply with the cold-weather limits must record and report additional information, as specified in § 63.788(b)(3) (ii)(C), (iii)(C), and (iv)(D).

^bAffected sources that detect a violation must record and report additional information, as specified in § 63.788(b)(4).

^cOPTION 4: the recordkeeping and reporting requirements of Option 4 are identical to those of Options 1, 2, or 3, depending on whether and how thinners are used. However, when using Option 4, the term “VOHAP” shall be used in lieu of the term “VOC,” and the owner or operator shall record and report the Administrator-approved VOHAP test method or certification procedure.

^dMajor sources that intend to become area sources by the compliance date may, in lieu of submitting an implementation plan, choose to submit a statement of intent as specified in § 63.787(b)(4).

APPENDIX A TO SUBPART II OF PART 63— VOC DATA SHEET¹

Properties of the Coating “As Supplied” by the Manufacturer²

Coating Manufacturer: _____
Coating Identification: _____
Batch Identification: _____
Supplied To: _____

Properties of the coating as supplied¹ to the customer:

A. Coating Density: (D_c)_s _____ g/L
[] ASTM D1475–90* [] Other³

B. Total Volatiles: (m_v)_s _____ Mass Percent
[] ASTM D2369–93* [] Other³

C. Water Content: 1. (m_w)_s _____ Mass Percent
[] ASTM D3792–91* [] ASTM D4017–90*
[] Other³

2. (v_w)_s _____ Volume Percent
[] Calculated [] Other³

D. Organic Volatiles: (m_o)_s _____ Mass Percent

E. Nonvolatiles: (v_n)_s _____ Volume Percent
[] Calculated [] Other³

F. VOC Content (VOC)_s:

1. _____ g/L solids (nonvolatiles)

2. _____ g/L coating (less water and exempt compounds)

G. Thinner Density: D_{th} _____ g/L
ASTM _____ [] Other³

Remarks: (use reverse side)

Signed: _____ Date: _____

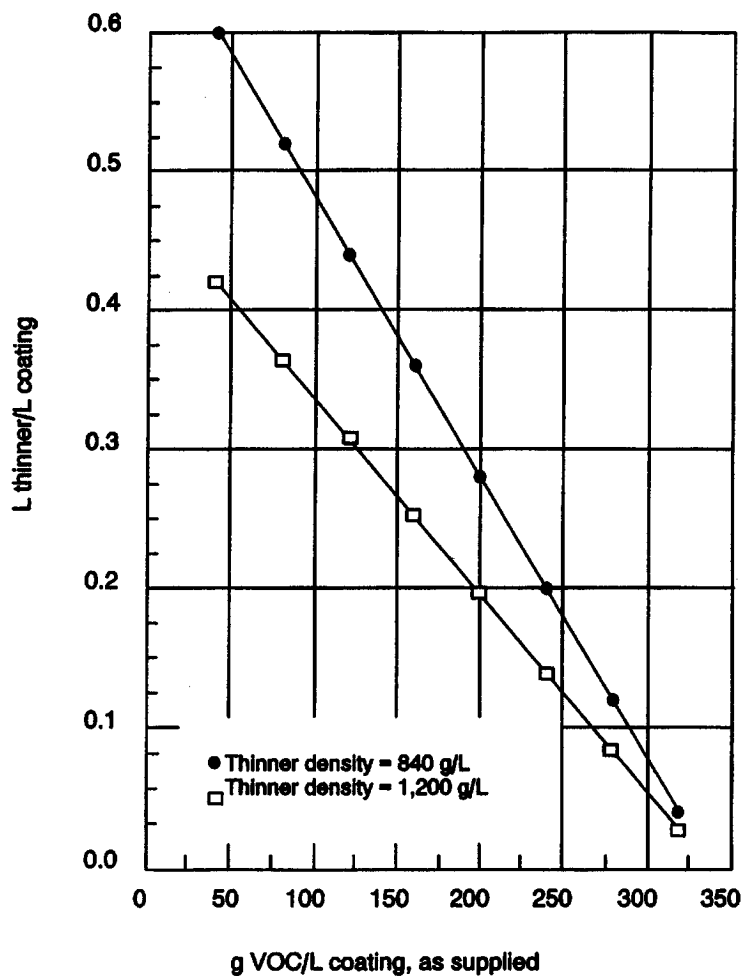
¹Adapted from EPA-340/1-86-016 (July 1986), p. II-2.

²The subscript “s” denotes each value is for the coating “as supplied” by the manufacturer.

*Incorporation by reference—see § 63.14.

³Explain the other method used under “Remarks.”

Appendix B To Subpart II of Part 63 -- Maximum Allowable Thinning Rates As A Function Of As Supplied VOC Content And Thinner Density^{a,b}



^a These graphs represent maximum allowable thinning ratios for general use coatings without water or exempt compounds.

^b The average density of the volatiles in the coating was assumed = 840 g solvent/L solvent.

[60 FR 64336, Dec. 15, 1995, as amended at 61 FR 66227, 66228, Dec. 17, 1996]

NITROGEN OXIDES EMISSIONS



Regional Nitrogen Oxides (NO_x) Emission Reductions #00-137(APCB)

Overview

On October 27, 1998, the U.S. EPA promulgated final federal rules requiring 22 states and the District of Columbia to submit state implementation plan (SIP) revisions to reduce the regional transport of ozone. The federal rule focused on reducing NO_x emissions in the affected states. In the federal rule, the U.S. EPA established a NO_x emission "budget" for each of the affected states and the District of Columbia. The "budget" represents a reduction from emissions in the year 2007 that the U.S. EPA believes will reduce the transport of NO_x emissions and will assist downwind areas in meeting ozone air quality standards. The states must demonstrate compliance with the "budget" by implementing control measures to reduce NO_x emissions beginning May 31, 2004.

While the rule does not mandate which sources will have to reduce emissions, the rule did provide options that would result in a 65% reduction of NO_x emissions from utility boilers and a 60% reduction from large industrial (non-utility) boilers and turbines. The U.S. EPA also discusses a 30% reduction from cement kilns, but does not require specific controls.

IDEM has developed draft rule language to implement this federal mandate. The NO_x reductions that will be achieved by this rule will result in significant air quality improvements throughout the state of Indiana, and will be especially important in those areas of the state where ozone levels exceed or regularly approach state and federal air quality health standards.

The draft rule generally follows the outline of the federal rule and contains the same key elements, which are summarized below. Because IDEM recommends that Indiana participate in the regional NO_x trading program, which will be administered by U.S. EPA, much of the state rule will incorporate federal language with little or no change. In several areas, the state has more flexibility to adapt the rule to its particular needs.

IDEM has worked extensively with the public on those issues and anticipates further discussion prior to final adoption.

Elements of the Draft Rule

The major elements of the rule are listed here and are explained in more detail in the following paragraphs.

- A 2007 ozone season "budget" (Indiana's baseline ozone budget is 340,654 tons of NO_x and its budget is 234,625 tons of NO_x, a 31% decrease).
- NO_x allowance allocation methodology.
- A NO_x emissions trading program that would begin in 2004 and be administered by U.S. EPA.
- A compliance supplement pool of NO_x allocations for use in 2004 and 2005 by companies needing extra time for compliance with control requirements and for those making early reductions.
- Monitoring and reporting requirements under the Acid Rain program at 40 CFR Part 75 apply to sources covered under the NO_x emissions trading program.
- Control requirements for cement kilns that require either the use of specified technology or an emissions reduction of 30%.

Description of Major Elements

Indiana's 2007 Budget

The final federal rule included a "budget" that each state must demonstrate compliance with by 2007. The budget in the final rule was based on the following:

- An emission rate of 0.15 lb NO_x/mmBtu for electric generating units
- A 60% reduction for large industrial boilers (> 250 mmBtu/hour)
- A 30% reduction in NO_x emissions from cement kilns

The federal rule included a 2007 Indiana baseline of 340,654 tons per ozone season with a 234,625 tons per ozone season budget that results in a 31%

NOx emissions reduction. The baseline represents the emissions that would occur without the reductions called for in the federal rule.

The baseline and the budget represents projected NOx emissions from electric generating units, non-electric generating units, other stationary sources, area sources, and mobile sources. However, U.S. EPA did not assume there would be reductions from area or mobile sources beyond those already required by existing or planning federal and state programs. U.S. EPA assumed that the emissions reductions would come primarily from the electric generating units (EGUs) and non-electric generating units (non-EGUs). However, states are free to regulate any source of NOx emissions so long as they meet their budget. After reviewing the inventory and available control measures, IDEM concluded that EGUs, non-EGUs and cement kilns were appropriate to control.

NOx Allowance Allocation

Indiana must allocate NOx allowances on a per ton basis to the EGUs and non-EGUs for them to operate. NOx allowances are capped at 45,952 per ozone season for EGUs and 11,117 per ozone season for non-EGUs, both a subset of the Indiana NOx budget. The draft rule allocates allowances to EGUs based on the .15 lb./mmBTU emission rate or the allowable emission rate, whichever is more stringent. It allocates allowances to non-EGUs based upon the .17 lb./mmBTU emission rate or the baseline emission rate from 1995-1999 (or the allowable emission rate for sources not operating in those years), whichever is more stringent. It also sets aside 5% of the EGU budget and 1% of the non-EGU budget for new sources and 2% of the total budget for energy efficiency and renewable energy projects. The energy efficiency/renewable energy set aside comes from flexibility in the budget, and it is IDEM's intent that this set aside not require additional controls from NOx sources beyond what the federal rule anticipates. The draft rule allocates allowances to existing units for a three year period, three years in advance. According to information provided to IDEM, all EGUs in Indiana will have to put controls on some of their units because NOx allowances will be insufficient to allow them to operate without adding controls.

NOx Emissions Trading Program

The draft rule includes U.S. EPA's NOx trading program, which allows sources to trade allowances with sources in other states subject to the NOx SIP

Call. U.S. EPA will administer the program. Sources must "true up" at the end of each ozone season, and have enough allowances to account for their NOx emissions or face penalties.

The trading program also allows "banking," creating and retaining emission reduction credits for future use by the source. However, to ensure emission reductions are achieved, the use of banked emissions in 2005 and thereafter are subject to "flow control." Flow control caps the amount of banked credits sources may use to prevent excessive future emissions.

NOx sources that are not regulated by the rule can "opt-in" to the trading program so long as they have emissions vented to a stack and comply with the monitoring and reporting sections of the rule.

Compliance Supplement Pool

The draft rule includes a compliance supplement pool of 19,915 NOx allowances. U.S. EPA established the number of allowances based on projections of the amount Indiana would need. Sources may use the compliance supplement pool to extend the compliance date, but only in 2004 and 2005. Sources who reduce emissions at some units before 2004 may receive "early reduction credits" from the compliance supplement pool to use for other units that will not meet the 2004 compliance date. Sources that demonstrate need also may receive allowances from the compliance supplement pool. "Need" exists when an EGU cannot meet the 2004 compliance date without creating an undue risk to the electricity supply or when a non-EGU would face a comparable risk. Sources may apply for up to 50% of the compliance supplement pool in 2004 and the remainder in 2005.

Compliance Monitoring

The draft rule requires that sources who participate in the trading program comply with the monitoring and reporting requirements of the Acid Rain Program at 40 CFR Part 75. This provision requires, for most sources, the use of continuous emission monitors.

Cement Kiln Requirements

These sources do not participate in the trading program, but are required to use specific control technology (mid-kiln firing or low NOx burners) or alternative control techniques to reduce emissions by 30%. Cement kilns also must test annually or monitor emissions and report them annually. Cement kilns may opt-in to the NOx trading

program if they meet the opt-in requirements.

Potential Cost

IDEM has conducted a fiscal analysis and has calculated the average cost effectiveness of the draft rule as follows:

- \$2,291 to \$2,445 per ton of NO_x reduced from utilities;
- \$1,321 to \$1,940 per ton of NO_x reduced from non-utility boilers;
- \$760 to \$1228 per ton of NO_x reduced from cement kilns.

These projected costs are in line with U.S. EPA's estimate of \$2000 per ton of NO_x reduced. The State Utility Forecasting Group at Purdue University projects the average increase in electricity rates to be 6-7% or \$.0033 per kw/hr.

There are numerous other issues that have been discussed with interested parties during this rulemaking. A discussion of those issues can be found in the background sections of the Response to Comments from the first and second comment periods, accessible at www.state.in.us/idem/oam/standard/Sip/index.html.

Outreach

IDEM has held public meetings in Indianapolis, Ft. Wayne, South Bend, Jeffersonville and Evansville to review rule language, discuss regulatory options, and receive comment on draft rule language. IDEM has held monthly meetings in Indianapolis with a NO_x workgroup comprised of interested parties, and will continue to do so throughout this process.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Roger Letterman, Rule Development Section, Office of Air Management, (317) 232-8342 or call (800) 451-6027, dial 0 and ask for Roger Letterman or extension 2-8342 (in Indiana).

TITLE 326 AIR POLLUTION CONTROL BOARD

DRAFT RULE #00-137(APCB)

DIGEST

Adds new rules 326 IAC 10-3 for the control of nitrogen oxide emissions from specific source categories and 326 IAC 10-4 for the establishment of a nitrogen oxides budget trading program. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2000, Indiana Register (23 IR 2606).

Second Notice of Comment Period and Notice of First Hearing: December 1, 2000, Indiana Register (24 IR 766).

Date of First Hearing: February 7, 2001.

DRAFT RULE

SECTION 1. 326 IAC 10-3 IS ADDED TO READ AS FOLLOWS:

Rule 10-3. Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10-3-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to any Portland cement kiln with process rates equal to or greater than:

- (1) long dry kilns of twelve (12) tons per hour (TPH);**
- (2) long wet kilns of ten (10) TPH;**
- (3) preheater kilns of sixteen (16) TPH; or**
- (4) precalciner and combined preheater and precalciner kilns of twenty-two (22) TPH.**

(b) A unit subject to this rule and, a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants, or an emission limit established under 326 IAC 2 shall comply with the limitations and requirements of this rule or the limitations and requirements of a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants, or an emission limit established under 326 IAC 2, whichever is more stringent. For a unit subject to this rule and 326 IAC 10-1, compliance with this rule shall be deemed to be compliance with 326 IAC 10-1, and the limits established in 326 IAC 10-3-3(a) shall supercede those in 326 IAC 10-1-4(b)(1).

(c) The requirements of this rule shall not apply to a unit that is participating in the NO_x Budget Trading Program under 326 IAC 10-4.

(d) The requirements of this rule shall not apply during start-up and shut-down periods and periods of malfunction. (*Air Pollution Control Board; 326 IAC 10-3-1*)

326 IAC 10-3-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

- (1) “Long dry kiln” means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is dry.**
- (2) “Long wet kiln” means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is a slurry.**
- (3) “Low-NO_x burners” means a type of cement kiln burner system designed to lower NO_x formation by controlling flame turbulence, delaying fuel/air mixing and establishing fuel-rich zones for initial combusting, that for firing of solid fuel by a kiln’s main burner includes an indirect firing system or comparable technique for the main burner to lower the amount of primary combustion air supplied with the pulverized fuel. In an indirect firing system , one air stream is used to convey pulverized fuel from the grinding equipment and another air stream is used to supply primary combustion air to the kiln burner with the pulverized fuel, with intermediate storage of the fuel.**
- (4) “Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.**
- (5) “Mid-kiln firing” means the secondary firing in a kiln system by injecting solid fuel at an intermediate point in the kiln system using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:**
 - (A) burning part of the fuel at a lower temperature; and**
 - (B) reducing conditions at the fuel injection point that may destroy some of the NO_x formed upstream in the kiln system.**
- (6) “Ozone control period” means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.**
- (7) “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one (1) or more of the forms of calcium sulfate as an interground addition.**
- (8) “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.**
- (9) “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and a second burner is used to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.**

(10) "Preheater kiln" means a Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(11) "Shutdown" means the cessation of operation of a Portland cement kiln for any purpose.

(12) "Startup" means the setting in operation of a Portland cement kiln for any purpose.

(Air Pollution Control Board; 326 IAC 10-3-2)

326 IAC 10-3-3 Emissions limits

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. (a) After May 31, 2004, an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the ozone control period of each year unless the owner or operator complies with one (1) of the following:

(1) Operation of the kiln with one (1) of the following:

(A) Low-NO_x burners.

(B) Mid-kiln firing.

(2) A limit on the amount of NO_x emitted when averaged over the ozone control period as follows:

(A) For long wet kilns, six (6) pounds of NO_x per ton of clinker produced.

(B) For long dry kilns, five and one-tenth (5.1) pounds of NO_x per ton of clinker produced.

(C) For preheater kilns, three and eight-tenths (3.8) pounds of NO_x per ton of clinker produced.

(D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO_x per ton of clinker produced.

(3) Installation and use of alternative control techniques, that may include kiln system modifications, such as conversions to semi-drying processing, subject to department and U.S. EPA approval, that achieve a thirty percent (30%) emissions decrease from baseline ozone control period emissions. Baseline emissions shall be the average of the sum of ozone control period emissions for the two (2) highest emitting years from 1995 through 2000.

(b) The owner or operator of any Portland cement kiln proposing to install and use an alternative control technique under subsection (a)(3) shall submit the proposed alternative control technique and calculation of baseline emissions with supporting documentation to the department and U.S. EPA for approval by May 1, 2003. The department shall include approved plan with emission limitations in the source's operating permit.

(c) Ozone control period emissions shall be determined using one (1) of the following methods:

(1) The average of the emission factors for the type of kiln from the Compilation of Air Pollutant Emission Factors (AP-42)* and the Alternative Control Techniques Document-NO_x Emissions from Cement Manufacturing*.

(2) The site-specific emission factor developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Methods 7, 7A, 7C, 7D, or 7E*, based on a range of

typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions; or

(3) An alternate method for establishing the emissions factors, when submitted with supporting data to substantiate such emissions factors and approved by the department and U.S. EPA as set forth in subsection (b) of this section.

***Copies of the Code of Federal Regulations (CFR), the Compilation of Air Pollutant Emission Factors (AP-42) and the Alternative Control Techniques Document-NO_x Emissions from Cement Manufacturing referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-3*)**

326 IAC 10-3-4 Monitoring and testing requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Beginning May 31, 2004 and each ozone control period thereafter, any owner or operator of a Portland cement kiln complying with section 3(a)(1) shall operate and maintain the device according to a preventative maintenance plan prepared in accordance with 326 IAC 1-6-3.

(b) Beginning May 31, 2004 and each ozone control period thereafter, any owner or operator of a Portland cement kiln complying with sections 3(a)(2) or 3(a)(3) of this rule shall either:

(1) complete an initial performance test and subsequent annual testing during the ozone control period of each year consistent with the requirements of 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E* and 326 IAC 3 or an alternate method approved pursuant to section 3(b) of the rule; or

(2) monitor NO_x emissions during the ozone control period of each year using a NO_x CEMS in accordance with 40 CFR 60, Subpart A* and 40 CFR 60, Appendix B*, and comply the quality assurance procedures specified in 40 CFR 60, Appendix F* and 326 IAC 3, as applicable.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-4*)**

326 IAC 10-3-5 Record keeping and reporting

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 5. (a) Beginning May 31, 2004 and each ozone control period thereafter, any owner or operator of a Portland cement kiln shall comply with the following record keeping and reporting requirements:

(1) An owner or operator complying with sections 3(a)(1) of this rule shall create and maintain records that include, but are not limited to the following:

(A) All routine and non-routine maintenance, repair, or replacement performed on the device or devices.

(B) The date, time and duration of any startup, shutdown or malfunction in the operation of a kiln or the device or devices.

(2) An owner or operator complying with section 3(a)(2) or 3(a)(3) shall create and maintain records that include, but are not limited to the following:

(A) The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln.

(B) The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment.

(C) The results of any performance testing.

(D) If a unit is equipped with a CEMS:

(i) Identification of time periods during which NO_x standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(ii) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(E) All records required to be produced or maintained shall be retained on site for a period of five (5) years. The records shall be made available to the department or the U.S. EPA upon request.

(b) The owner or operator shall comply with the following reporting requirements:

(1) By May 31, 2004, submit to the department the following information:

(A) The identification number and type of each unit subject to this rule.

(B) The name and address of the plant where the unit is located.

(C) The name and telephone number of the person responsible for demonstrating compliance with this rule.

(D) Anticipated control measures.

(2) Submit a report documenting for that unit the total NO_x emissions and the average NO_x emission rate for the ozone control period of each year to the department by October 31, beginning in 2004 and each year thereafter.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-5*)**

SECTION 2. 326 IAC 10-4 IS ADDED TO READ AS FOLLOWS:

Rule 10-4. Nitrogen Oxides Budget Trading Program

326 IAC 10-4-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule establishes a NO_x emissions budget and NO_x trading program for electricity generating units and large affected units as described herein. The following units shall be NO_x budget units, and any source that includes one (1) or more NO_x budget units shall be a NO_x budget source, and shall be subject to the requirements of this rule:

- (1)** An electricity generating unit (EGU) as defined under section 2(15) of this rule.
- (2)** A large affected unit as defined in section 2(25) of this rule.

(b) A unit described under subsection (a) shall not be a NO_x budget unit, if the unit has a federally enforceable permit that meets the requirements of subdivisions (1) through (3):

(1) The federally enforceable permit includes terms and conditions that restrict the unit to burning only natural gas or fuel oil during the ozone control period in 2004 or the first year of operation for the source and each ozone control period thereafter.

(2) The federally enforceable permit includes terms and conditions that restrict the unit's operating hours during each ozone control period to the number of hours, determined in accordance with subdivisions (3)(B) and (3)(C), that limits the unit's potential NO_x mass emissions for the ozone control period to twenty-five (25) tons or less.

(3) For each ozone control period, the federally enforceable permit must do the following:

(A) Restrict the unit to burning only natural gas or fuel oil during an ozone control period in 2004 or later and each ozone control period thereafter.

(B) Include one (1) of the following mechanisms for ensuring that the unit's ozone control period NO_x emissions do not exceed twenty-five (25) tons:

- (i)** Limit the unit's total actual control period emissions to twenty-five (25) tons of NO_x emissions, measured by a continuous emissions monitoring system (CEMS); or
- (ii)** Restrict the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions, where the unit's potential NO_x mass emissions shall be calculated as follows:

(AA) Select the default NO_x emission rate in 40 CFR 75.19(c)(1)(ii), Table 2* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example only natural gas or only fuel oil, that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Multiply the default NO_x emission rate under subitem (AA) by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(24) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative, of the unit's current capabilities because modifications have been

made to the unit, limiting its capacity permanently; or
(iii) Restrict the unit's usage of each fuel that it is authorized to burn such that the unit's potential NO_x mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated as follows:

(AA) Identify the default NO_x emission rate in 40 CFR 75.19(c)(1)(ii), Table 2 for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Identify the percentage of the ozone control period during which the unit intends to burn each type of fuel that is authorized under the fuel use restriction in clause (A). For each fuel type, multiply this percentage by twenty-five (25) tons and multiply the results by two thousand (2,000) pounds per ton to identify the maximum emissions from each fuel type during the ozone control period.

(CC) Calculate the maximum amount of each fuel that may be burned at the source, using the default NO_x emission rate under item (AA) and the total emissions allowable from each fuel type.

(C) Require that the owner or operator of the unit shall retain records, on site at the source that includes the unit for a period of five (5) years, demonstrating that the terms and conditions of the permit related to these restrictions were met.

(D) Require that the owner or operator of the unit shall report the unit's hours of operation, treating any partial hour of operation as a whole hour of operation, or such other parameter as is being used to demonstrate compliance with the twenty-five (25) ton per ozone control period during each ozone control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

(4) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

(A) is issued a federally enforceable permit under subsection (b); or

(B) whose federally enforceable permit issued by the department under subsection (b):

(i) is revised to remove any restriction;

(ii) includes any restriction that is no longer applicable; or

(iii) does not comply with any restriction.

(5) A unit described under this subsection shall be a NO_x budget unit, subject to the requirements of this rule if one (1) of the following occurs for any ozone control period:

(A) the fuel use restriction under subdivision (3)(A) or the operating hours restriction under subdivisions (3)(B) and (3)(C) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable; or

(B) the unit does not comply with the fuel use restriction under subdivision (3)(A) or the operating hours restriction under subdivision (3)(B) and (3)(C).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the ozone control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

(c) A unit subject to 40 CFR 97* shall be subject to the requirements of this rule on May 1, 2004 and shall no longer be subject to 40 CFR 97* as of that date. Allowances for such unit shall be allocated in accordance with section 9 of this rule for the 2004 ozone control period and thereafter.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-1*)**

326 IAC 10-4-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

- (1) "Account certificate of representation" means the completed and signed submission required by section 6 of this rule for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the source or sources and of the NO_x budget units at the source or sources with regard to matters under the NO_x budget trading program.
- (2) "Account number" means the identification number given by the U.S. EPA to each NO_x allowance tracking system account.
- (3) "Acid rain emissions limitation" means, as defined in 40 CFR 72.2*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).
- (4) "Allocate" or "allocation" means the determination by the department or the U.S. EPA of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.
- (5) "Automated data acquisition and handling system (DAHS)" means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H*, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by 40 CFR 75, Subpart H*.
- (6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other heat transfer medium.
- (7) "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.
- (8) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting

from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(9) “Commence commercial operation” means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit’s date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or section 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit’s date of commencement of commercial operation.

(10) “Commence operation” means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit’s date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or section 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit’s date of commencement of operation.

(11) “Common stack” means a single flue through which emissions from two (2) or more units are exhausted.

(12) “Compliance account” means a NO_x allowance tracking system account, established by the U.S. EPA for a NO_x budget unit under section 10 of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone control period for the purpose of meeting the unit’s NO_x budget emissions limitation.

(13) “Compliance certification” means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO_x budget source’s or a NO_x budget unit’s compliance or noncompliance with this rule and that is signed by the NO_x authorized account representative in accordance with section 6 of this rule.

(14) “Continuous emission monitoring system (CEMS)” means the equipment required under 40 CFR 75, Subpart H* to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO_x. The following systems are component parts included, consistent with 40 CFR 75*, in a continuous emission monitoring system:

(A) Flow monitor.

(B) Nitrogen oxides pollutant concentration monitors.

(C) Diluent gas monitor, oxygen or carbon dioxide, when the monitoring is required by 40 CFR 75, Subpart H*.

(D) A continuous moisture monitor when the monitoring is required by 40 CFR 75,

Subpart H*.

(E) An automated data acquisition and handling system.

(15) “Electricity generating unit (EGU)” means:

(A) For units that commenced operation before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five megawatts (25 MWe) and produced electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five megawatts (25 MWe) and produced electricity for sale under a firm contract to the electric grid.

(C) For units that commence operation on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five megawatts (25 MWe) and produces electricity for sale.

(16) “Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

(17) “Energy efficiency or renewable energy projects” means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the primary use of a single end user, such as cogeneration and fuel cell systems.

(C) Zero-emission renewable energy projects including wind, photovoltaic, and hydropower projects.

(D) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units, except for equipment that is a NO_x budget unit.

(E) Improvements to existing fossil fuel fired electrical generation units that decrease the heat rate used to generate electricity.

Energy efficiency or renewable energy projects do not include nuclear power projects.

(18) “Energy Information Administration” means the Energy Information Administration of the United States Department of Energy.

(19) “Excess emissions” means any tonnage of NO_x emitted by a NO_x budget unit during an ozone control period that exceeds the NO_x budget emissions limitation for the unit.

(20) “Fossil fuel” means any of the following:

(A) Natural gas.

(B) Petroleum.

(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(21) “Fossil fuel-fired” means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(22) "General account" means a NO_x allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(23) "Generator" means a device that produces electricity.

(24) "Heat input" means the product, in million British thermal units per unit of time (mmBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(25) "Large affected unit" means:

(A) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million Btus per hour (250 mmBtu/hr) and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million Btus per hour (250 mmBtu/hr) and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million Btus per hour (250 mmBtu/hr) that:

(i) at no time serves a generator producing electricity for sale; or

(ii) at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five megawatts (25 MWe) or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

(26) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of the unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(27) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical

design and physical characteristics of the unit and federally enforceable permit conditions limiting the heat input.

(28) “Maximum potential hourly heat input” means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D* to report heat input. Calculate this value in accordance with 40 CFR 75*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO₂) concentration, in percent of CO₂.

(ii) The minimum oxygen (O₂) concentration, in percent of O₂.

(29) “Maximum potential NO_x emission rate” means:

(A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/mmBtu);

(B) calculated in accordance with 40 CFR 75, Appendix F, Section 3*;

(C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2*; and

(D) either the:

(i) maximum oxygen (O₂) concentration in percent of O₂; or

(ii) minimum carbon dioxide (CO₂) concentration in percent of CO₂

under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(30) “Maximum rated hourly heat input” means a unit-specific maximum hourly heat input, in million British thermal units (mmBtu), that is the higher of either the manufacturer’s maximum rated hourly heat input or the highest observed hourly heat input.

(31) “Monitoring system” means any monitoring system that meets the requirements of 40 CFR 75, Subpart H*, including the following:

(A) A continuous emissions monitoring system.

(B) An excepted monitoring system under 40 CFR 75.19* or 40 CFR 75, Appendix D or E*.

(C) An alternative monitoring system.

(32) “Most stringent state or federal NO_x emissions limitation” means, with regard to a NO_x budget opt-in source, the lowest NO_x emissions limitation, in terms of pounds per million British thermal units (lb/mmBTU), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(33) “Nameplate capacity” means the maximum electrical generating output, in megawatt electrical (MWe), that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(34) “Non-title V permit” means a federally enforceable permit issued by the department under 326 IAC 2-8.

(35) “NO_x allowance” means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO_x) budget trading program to emit up to one (1) ton of NO_x during the ozone control period of the specified year or of any year thereafter. “NO_x allowance” also includes authorization to emit up to one (1) ton of nitrogen oxides during the ozone control period of the specified year or of any year thereafter by the U.S. EPA under 40 CFR 97*.

(36) “NO_x allowance deduction” or “deduct NO_x allowances” means the permanent withdrawal of NO_x allowances by the U.S. EPA from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H*, or for any other allowance surrender obligation under this rule.

(37) “NO_x allowances held” or “hold NO_x allowances” means the NO_x allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO_x allowance tracking system account.

(38) “NO_x allowance tracking system” means the system by which the U.S. EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(39) “NO_x allowance tracking system account” means an account in the NO_x allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(40) “NO_x allowance transfer deadline” means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the ozone control period immediately preceding the deadline.

(41) “NO_x authorized account representative” means either of the following:

(A) For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program; or

(B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(42) “NO_x budget emissions limitation” means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for an ozone control period under sections 10(i) and 10(k) of this rule, adjusted by any deductions of the NO_x allowances for any of the following reasons:

(A) To account for actual utilization under section 9(e) of this rule for the ozone control period.

(B) To account for excess emissions for a prior ozone control period under section 10(k)(5) of this rule.

(C) To account for withdrawal from the NO_x budget trading program.

(D) For a change in regulatory status, for a NO_x budget opt-in source under sections 13(g) through 13(i) of this rule.

(43) “NO_x budget opt-in permit” means a NO_x budget permit covering a NO_x budget opt-in source.

(44) “NO_x budget opt-in source” means a source that includes one (1) or more NO_x budget units:

(A) that has elected to become a NO_x budget source under the NO_x budget trading program; and

- (B) whose NO_x budget opt-in permit has been issued and is in effect under section 13 of this rule.
- (45) “NO_x budget permit” means the legally binding and federally enforceable written document, or portion of the document;
- (A) issued by the department under this rule, including any permit revisions; and
- (B) specifying the NO_x budget trading program requirements applicable to the following:
- (i) A NO_x budget source.
 - (ii) Each NO_x budget unit at the NO_x budget source.
 - (iii) The owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.
- (46) “NO_x budget source” means a source that includes one (1) or more NO_x budget units.
- (47) “NO_x budget trading program” means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 97* and pursuant to 40 CFR 51.121*, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.
- (48) “NO_x budget unit” means a unit that is subject to the NO_x budget trading program emissions limitation under sections 1(a) or 13(a) of this rule.
- (49) “Operating” means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under section 13(d) of this rule.
- (50) “Operator” means any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.
- (51) “Opt-in” means to elect to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under section 13 of this rule.
- (52) “Overdraft account” means the NO_x allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.
- (53) “Owner” means any of the following persons:
- (A) Any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.
 - (B) Any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.
 - (C) Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or

withdrawn.

(D) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(54) "Ozone control period" means the period as follows:

(A) For 2004, beginning May 31 and ending on September 30, inclusive.

(B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(55) "Receive" or "receipt of" means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.

(56) "Recordation", "record", or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the U.S. EPA from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(57) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A*.

(58) "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the U.S. EPA, under sections 10(e) through 10(g) of this rule.

(59) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA*, a source, including a source with multiple units, shall be considered a single facility.

(60) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(61) "Title V operating permit" means a permit issued under 326 IAC 2-7.

(62) "Title V operating permit regulations" means the rules under 326 IAC 2-7.

(63) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for an ozone control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR 75, Subpart H*, with any remaining fraction of a ton equal to or greater than five-tenths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than five-tenths (0.50) ton deemed to equal zero (0) tons.

(64) "Trading program budget" means the total number of NO_x tons apportioned to all NO_x budget units, in accordance with the NO_x budget trading program, for use in a given ozone control period.

(65) "Unit" means a fossil fuel-fired:

- (A) stationary boiler;
- (B) combustion turbine; or
- (C) combined cycle system.

(65) “United States Environmental Protection Agency” or “U.S. EPA” means the administrator of the U.S. EPA or the administrator’s duly authorized representative. The department authorizes the U.S. EPA to assist the department in implementing this rule by carrying out the functions set forth for the U.S. EPA in this rule.

(66) “Unit operating day” means a calendar day in which a unit combusts any fuel.

(67) “Unit operating hour” or “hour of unit operation” means any hour, or fraction of an hour, during which a unit combusts any fuel.

(68) “Utilization” means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit’s total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-2*)

326 IAC 10-4-3 Retired unit exemption

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. (a) This section applies to any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of this section and sections 1, 2, 5, 9, 10, and 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative, authorized in accordance with section 6, shall submit a notice to the department and the U.S. EPA. The notice shall state, in a format prescribed by the department, that the unit:

- (1)** is permanently retired; and
- (2)** shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule.

(3) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than eighteen (18) months prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(4) If the unit is located at a source that is required, or but for this exemption would be required, to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(5) The owners and operators and, to the extent applicable, the NO_x authorized account representative shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(6) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in unit under section 13 of this rule.

(7) The owners and operators shall retain records at the source demonstrating that the unit is permanently retired for a period of five (5) years. The five (5) year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the following dates:

(A) The date on which the NO_x authorized account representative submits a NO_x budget permit application under subdivision (3) or (4).

(B) The date on which the NO_x authorized account representative is required under subdivision (3) or (4) to submit a NO_x budget permit application.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H*, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-3*)

326 IAC 10-4-4 Standard requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) The owners, operators, and the NO_x authorized account representative of each NO_x budget source shall comply with the following permit requirements:

(1) The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall submit the following:

(A) A complete NO_x budget permit application under section 7(c) of this rule to the department in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a NO_x budget permit application in a timely manner and issue or deny a NO_x budget permit.

(2) The owners and operators of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit and operate the unit in compliance with the NO_x budget permit.

(3) The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, nor to have a NO_x budget permit, under section 7 of this rule for the NO_x budget source.

(b) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the following monitoring requirements:

(1) The monitoring requirements of 40 CFR 75* and section 12 of this rule.

(2) The emissions measurements recorded and reported in accordance with 40 CFR 75* and section 12 of this rule shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subsection (c).

(c) The owners and operators of each NO_x budget source shall comply with the following NO_x requirements:

(1) The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under section 10(i) of this rule, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the ozone control period from the unit, as determined in accordance with 40 CFR 75* and section 12 of this rule, plus any amount necessary to account for actual utilization under section 9(e) of this rule for the ozone control period.

(2) Each ton of NO_x emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of the Clean Air Act (CAA) and this rule.

(3) A NO_x budget unit shall be subject to the requirements under subdivision (1) starting on the later of:

(A) May 31, 2004; or

(B) the date on which the unit commences operation.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with sections 9, 10, 11, 13, and 14 of this rule.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under subdivision (1), for an ozone control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated under the NO_x budget trading program is a limited authorization to emit one (1) ton of NO_x in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the U.S. EPA or the department to terminate or limit the authorization.

(7) A NO_x allowance allocated under the NO_x budget trading program does not constitute a property right.

(8) Upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without any further review.

(d) The owners and operators of a NO_x budget unit that has excess emissions in any ozone control period shall do the following:

(1) Surrender the NO_x allowances required for deduction under section 10(k)(5) of this rule.

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under section 10(k)(7) of this rule.

(e) The owners and operators of each NO_x budget source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on site at the source each of the following documents for a period of five (5) years. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the department or the U.S. EPA:

(A) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 6(h) of this rule. The certificate and documents shall be retained on site at the source beyond the five (5) year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(B) All emissions monitoring information, in accordance with 40 CFR 75* and section 12 of this rule; provided that to the extent that 40 CFR 75* and section 12 of this rule provides for a three (3) year period for record keeping, the three (3) year period shall apply.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x budget trading program.

(D) Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x budget trading program or to demonstrate compliance

with the requirements of the NO_x budget trading program.

(2) The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under section 8, 12, or 13 of this rule.

(f) The owners and operators of each NO_x budget source shall be liable as follows:

(1) Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under section 3 of this rule shall be subject to enforcement pursuant to applicable state or federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO_x budget trading program that occurs prior to the date that the revision takes effect.

(4) Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

(5) Any provision of the NO_x budget trading program that applies to a NO_x budget source, including a provision applicable to the NO_x authorized account representative of a NO_x budget source, shall also apply to the owners and operators of the source and of the NO_x budget units at the source.

(6) Any provision of the NO_x budget trading program that applies to a NO_x budget unit, including a provision applicable to the NO_x authorized account representative of a NO_x budget unit, shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under 40 CFR 75* and section 12 of this rule, the owners and operators and the NO_x authorized account representative of one (1) NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x budget permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x budget source or NO_x budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the CAA.

*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-4*)

326 IAC 10-4-5 Computation of time

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 5. (a) Unless otherwise stated, any time period scheduled, under the NO_x budget trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x budget trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period except the ozone control period as defined under section 2(53) of this rule, under the NO_x budget trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. (*Air Pollution Control Board; 326 IAC 10-4-5*)

326 IAC 10-4-6 NO_x authorized account representative for NO_x budget sources

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Except as provided under subsection (f), each NO_x budget source, including all NO_x budget units at the source, shall have one (1) and only one (1) NO_x authorized account representative, with regard to all matters under the NO_x budget trading program concerning the source or any NO_x budget unit at the source.

(b) The NO_x authorized account representative of the NO_x budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x budget units at the source.

(c) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) A NO_x budget permit shall not be issued, and a NO_x allowance tracking system account shall not be established for a NO_x budget unit at a source, until the U.S. EPA has received a complete account certificate of representation under subsection (h) for a NO_x authorized account representative of the source and the NO_x budget units at the source.

(e) The following shall apply to a submission made under the NO_x budget trading program:

(1) Each submission under the NO_x budget trading program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x budget source on

behalf of which the submission is made. Each submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The department and the U.S. EPA shall accept or act on a submission made on behalf of the owner or operators of a NO_x budget source or a NO_x budget unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a NO_x budget source chose to designate an alternate NO_x authorized account representative:

(1) An account certificate of representation may designate one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(2) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(3) Except in this subsection, subsections (a), (g), (h), and sections 10(c) through 10(e) of this rule, whenever the term NO_x authorized account representative is used in this rule, the term shall be construed to include the alternate NO_x authorized account representative.

(g) The following shall apply when changing the NO_x authorized account representative, the alternate NO_x authorized account representative or there are changes in the owners and operators:

(1) The NO_x authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(2) The alternate NO_x authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding account certificate of

representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(3) Changes in the owners and operators shall be made as follows:

(A) In the event a new owner or operator of a NO_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the department or the U.S. EPA, as if the new owner or operator were included in the list.

(B) Within thirty (30) days following any change in the owners and operators of a NO_x budget source or a NO_x budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

(h) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the NO_x budget source and each NO_x budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the U.S. EPA, or a court regarding the source or unit."

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(i) The following shall apply to an objection concerning the NO_x authorized account

representative:

(1) Once a complete account certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the department or the U.S. EPA under the NO_x budget trading program.

(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(Air Pollution Control Board; 326 IAC 10-4-6)

326 IAC 10-4-7 Permit requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 7. (a) For each NO_x budget source required to have a federally enforceable permit, the permit shall include a NO_x budget permit administered by the department as follows:

(1) For NO_x budget sources required to have a Part 70 operating permit under 326 IAC 2-7, the NO_x budget portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 13 of this rule.

(2) For NO_x budget sources required to have a FESOP permit, the NO_x budget portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 13 of this rule.

(3) Each NO_x budget permit, including a draft or proposed NO_x budget permit, if applicable, shall contain all applicable NO_x budget trading program requirements and shall be a complete and segregable portion of the permit.

(b) The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the department a complete NO_x budget permit application under subsection (c) as follows:

(1) For NO_x budget sources required to have a Part 70 operating permit under 326 IAC 2-7 the following shall apply:

(A) For any source, with one (1) or more NO_x budget units that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering the NO_x budget units to the department within the applicable permit application review time frames in 326 IAC 2-1.1-8 and 326 IAC 2-7, assuming the maximum review time is required, such that the source submits the application before May 31, 2004.

(B) For any source, with one (1) or more NO_x budget unit that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a

complete NO_x budget permit application under subsection (c) covering each NO_x budget unit to the department within the applicable permit application review time frames in 326 IAC 2-1.1-8 and 326 IAC 2-7, assuming the maximum review time is required, such that the source submits the application before the later of

(i) May 31, 2004; or

(ii) the date on which the NO_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) for the NO_x budget source covering the NO_x budget units at the source in accordance with 326 IAC 2-7-4(a)(1)(D).

(2) For NO_x budget sources required to have a FESOP permit under 326 IAC 2-8 the following shall apply:

(A) For any source, with one (1) or more NO_x budget units that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x budget units to the department at least two hundred seventy (270) days before May 31, 2004.

(B) For any source, with one (1) or more NO_x budget units that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x budget unit to the department at least two hundred seventy (270) days before the later of:

(i) May 31, 2004; or

(ii) the date on which the NO_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) for the NO_x budget source covering the NO_x budget units at the source in accordance with 326 IAC 2-8-3(h).

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete NO_x budget permit application shall include the following elements concerning the NO_x budget source for which the application is submitted, in a format prescribed by the department:

(1) Identification of the NO_x budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable.

(2) Identification of each NO_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under section 1(a) or under section 13 of this rule.

(3) The standard requirements under section 4 of this rule.

(4) For each NO_x budget opt-in unit at the NO_x budget source, the following certification statements by the NO_x authorized account representative:

(A) "I certify that each unit for which this permit application is submitted under 326 IAC 10-4-13 is not a NO_x budget unit under 326 IAC 10-4-2(a) and is not covered by a retired unit exemption under 326 IAC 10-4-3 that is in effect."

(B) If the application is for an initial NO_x budget opt-in permit, "I certify that each unit for which this permit application is submitted under 326 IAC 10-4-13 is currently operating, as that term is defined under 326 IAC 10-4-1(45)."

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each NO_x budget permit, including any draft or proposed NO_x budget permit, if applicable, shall contain, in a format prescribed by the department, all elements required for a complete NO_x budget permit

application under subsection (c) as approved or adjusted by the department.

(e) Each NO_x budget permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x budget units covered by the permit or the overdraft account of the NO_x budget source covered by the permit.

(f) Notwithstanding IC 13-15-5, the initial NO_x budget permit covering a NO_x budget unit for which a complete NO_x budget permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) Except as provided in subsection (e), the department shall revise the NO_x budget permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a NO_x budget source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a NO_x budget source with a FESOP permit.

(Air Pollution Control Board; 326 IAC 10-4-7)

326 IAC 10-4-8 Compliance certification

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 8. (a) For each ozone control period in which one (1) or more NO_x budget units at a source are subject to the NO_x budget emissions limitation, the NO_x authorized account representative of the source shall submit to the department and the U.S. EPA by November 30 of that year, a compliance certification report for each source covering all NO_x budget units.

(b) The NO_x authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the U.S. EPA, concerning each NO_x budget unit at the source and subject to the NO_x budget emissions limitation for the ozone control period covered by the report:

(1) Identification of each NO_x budget unit.

(2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under section 10(k) of this rule for the ozone control period.

(3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with 40 CFR 75, Subpart H* and section 12 of this rule, the percentage of allowances that is to be deducted from each unit's compliance account under section 10(k)(8) of this rule.

(4) The compliance certification under subsection (c).

(c) In the compliance certification report under subsection (a), the NO_x authorized account

representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x budget units at the source in compliance with the NO_x budget trading program, whether each NO_x budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x budget trading program applicable to the unit, including the following:

- (1) Whether the unit was operated in compliance with the NO_x budget emissions limitation.
- (2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with 40 CFR 75, Subpart H* and section 12 of this rule.
- (3) Whether all the NO_x emissions from the unit, or a group of units, including the unit, using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with 40 CFR 75, Subpart H* and section 12 of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made.
- (4) Whether the facts that form the basis for certification under 40 CFR 75, Subpart H* and section 12 of this rule of each monitor at the unit or a group of units, including the unit, using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under 40 CFR 75, Subpart H* and section 12 of this rule, if any, has changed.
- (5) If a change is required to be reported under subdivision (4), the NO_x authorized account representative shall specify the following:
 - (A) The nature of the change.
 - (B) The reason for the change.
 - (C) When the change occurred.
 - (D) How the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

(d) The department or the U.S. EPA may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x budget trading program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(e) The U.S. EPA may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-8*)

326 IAC 10-4-9 NO_x allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department under subsection (c) for an ozone control period shall equal the total number of tons of NO_x emissions apportioned to the NO_x budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO_x emissions that are available for allocation as NO_x allowances under this section as follows:

(1) Forty-three thousand six hundred fifty-four (43,654) tons for electricity generating units in 2004 through 2006 and forty-five thousand thirty-three (45,033) tons thereafter.

(2) Nine thousand eight hundred fifty-five (9,855) tons for large affected units.

The total number of NO_x allowances shall be adjusted, as needed, to account for units exempted under section 1(b) of this rule.

(b) The department shall allocate NO_x allowances to NO_x budget units according to the following schedule:

(1) A three (3) year allocation that is three (3) years in advance of the ozone control period that the allowances may be used with an initial three (3) year allocation shall be as follows:

(A) By June 30, 2001, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By December 31, 2003, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By December 31, 2006, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, 2012.

(D) By December 31, 2009 and by December 31 every three (3) years thereafter, the department shall submit to the U.S. EPA, the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods four (4), five (5) years and six (6) years after the year of the allowance allocation.

(2) If the department fails to submit to the U.S. EPA the NO_x allowance allocations in accordance with this subdivision, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO_x allowances as were allocated for the preceding ozone control period.

(c) The heat input, in million British thermal units (mmBtu), used for calculating NO_x allowance allocations for each NO_x budget unit under section 1 of this rule shall be:

(1) For a NO_x allowance allocation under subsections (b)(1)(A), the average of the two (2) highest amounts of the unit's heat input for the ozone control periods in 1995 through 1999.

(2) For a NO_x allowance allocation under subsection (b)(1)(B) through (b)(1)(D), the unit's average of the two (2) highest heat inputs for the ozone control period in the years that are one (1), two (2), three (3), four (4), and five (5) years before the year when the NO_x allocation is being calculated.

The unit's total heat input for the ozone control period in each year shall be determined in

accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year. The owner or operator of a NO_x budget unit shall submit heat input data within thirty (30) days if requested by the department.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO_x budget units that have been in operation for two (2) years prior to the year in which allocations are made a total number of NO_x allowances equal to the amount under subsection (a)(1), in accordance with the following procedures:

(1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling fifteen one-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent, multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO_x allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating unit for an ozone control period under subdivision (1) does not equal the amount under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals the amount under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(1); and

(B) dividing by the total number of NO_x allowances allocated under subdivision (1), and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected unit in an amount equaling one (1) of the following:

(A) For units operating each year between 1995 and 1999, seventeen hundredths (0.17) pound per million British thermal units or the baseline emission rate, whichever is more stringent, multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO_x allowance, as appropriate. The baseline emission rate shall be the average ozone control period emission rate for the years 1995 through 1999.

(B) For units that did not operate each year between 1995 and 1999, seventeen hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent.

(4) If the initial total number of NO_x allowances allocated to all large affected units for an ozone control period under subdivision (3) does not equal the amount under section (a)(2), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (3) so that the total number of NO_x allowances allocated equals the amount under section (a)(2). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under section (a)(2); and

(B) dividing by the total number of NO_x allowances allocated under subdivision (3), and rounding to the nearest whole NO_x allowance as appropriate.

For units having emission limitation only in tons on an annual basis, the allowable emission rate in pounds per million Btu (lb/mmBtu) shall be determined by dividing the emission limitation by eight thousand seven hundred sixty (8,760) hours, multiplying by two thousand

(2,000) pounds and dividing the result by unit's permitted heat input rate.

(e) For new NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1, 2000 or for projects that reduce NO_x emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during an ozone control period beginning May 1, 2004, the department shall allocate NO_x allowances in accordance with the following procedures:

(1) The department shall establish one (1) allocation set-aside for new NO_x budget units and one (1) allocation set-aside for energy efficiency and renewable energy projects for each ozone control period as follows:

(A) The new unit allocation set-aside shall be allocated NO_x allowances equal to two thousand four hundred nine (2,409) tons in 2004, 2005, and 2006, and one thousand thirty (1,030) tons thereafter.

(B) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_x allowances equal to one thousand one hundred forty-one (1,141) tons.

(2) The NO_x authorized account representative of a new NO_x budget unit or a general account may submit to the department a request, in writing or in a format specified by the department, for NO_x allowances as follows:

(A) For a new NO_x budget unit, for one (1) ozone control period under subsection (b), during which the NO_x budget unit commenced, or is projected to commence, operation. The NO_x authorized account representative shall reapply each year until the NO_x budget unit is eligible to use NO_x allowances allocated under subsection (d).

(B) For energy efficiency or renewable energy projects, project sponsors may request the reservation of NO_x allowances, for one (1) control period in which the project is implemented. The NO_x authorized account representative may reapply each year, not to exceed five (5) ozone control periods. Requests for allowances may be made only for projects implemented within two (2) years of the beginning of the first ozone control period for which allowances are requested. Projects must equal at least one (1) ton of NO_x emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

The NO_x allowance allocation request must be submitted by December 1 of the year prior to the first ozone control period for which the NO_x allowance allocation is requested and, and for new NO_x budget units, after the date on which the department issues a permit to construct the NO_x budget unit and the Engineering Division, Indiana Utility Regulatory Commission has received the required notification prior to unit startup.

(3) In a NO_x allowance allocation request under this subsection, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(A) For an electricity generating unit:

(i) fifteen one-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent;

(ii) multiplied by the NO_x budget unit's maximum design heat input, in

million British thermal units per hour; and
(iii) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(B) For a large affected unit:

(i) seventeen one-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent;
(ii) multiplied by the NO_x budget unit's maximum design heat input, in million British thermal units per hour; and
(iii) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(C) For energy efficiency or renewable energy projects:

(i) Projects in sections 2(17)(A) and 2(17)(B) of this rule and that are sponsored by end-users or non-utility third parties receive allowances based upon the number of kilowatt hours of electricity saved during an ozone season and the following formula:

$$\text{Allowances} = (\text{kWS} * 0.0015) / 2000$$

where: Allowances = the number of allowances awarded to a project sponsor.

kWS = the number of kilowatt hours of electricity saved during an ozone season by the project.

(ii) Projects in sections 2(17)(A) and 2(17)(B) of this rule and that are sponsored by NO_x allowance account holders that own or operate units subject to the emission limitations of this rule will be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{kWS} * 0.000375) / 2000$$

where: Allowances = the number of allowances awarded to a project sponsor.

kWS = the number of kilowatt hours of electricity saved during an ozone season by the project.

(iii) Projects in section 2(17)(C) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone season and according to the following formula:

$$\text{Allowances} = (\text{kWG} * 0.0015) / 2000$$

where: Allowances = the number of allowances awarded to a project sponsor.

kWG = the number of kilowatt hours of electricity generated during an ozone season by the project.

(iii) Projects in sections 2(17)(D) and 2(17)(E) of this rule receive

allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

$$\text{Allowances} = [(Et1 - Et2) * h] * 0.25$$

where: Allowances = the number of allowances awarded to a project sponsor.

Et1 = the emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.

Et2 = the emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.

h = the number of hours in operation during the ozone season.

Allowances will be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department will consult the Indiana Department of Commerce concerning verification and certification.

(4) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation by December 1 of each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall determine whether, and shall make any necessary adjustments to the request to ensure that, for electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of clause (3)(A), for large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of clause (3)(B), and for energy efficiency and renewable energy projects the number of allowances specified are consistent with the requirements of clause (3)(C).

(B) If the remaining allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under item (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under item (A), to the NO_x budget unit. Any unused allowances shall be added to the new source set-aside for distribution to new units.

(C) If the allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under item (A), the department shall allocate the remaining allocation set-aside to the NO_x budget units on a pro rata basis.

(D) After a new budget unit has operated in one (1) control period it becomes an existing budget unit and the department will allocate allowances for the control period commencing three (3) years in the future according to subsections (b) and (d). The unit will continue to receive allowances from the new unit set-aside according to subdivision (3) until it is eligible to use allowances allocated under subsection (d).

Within sixty (60) days of receipt of a NO_x allowance allocation request, the department shall take appropriate action under subdivision (4) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the ozone control period to the NO_x budget unit or energy efficiency or

renewable energy projects.

(f) For a new NO_x budget unit that is allocated NO_x allowances under subsection (e) for an ozone control period, the U.S. EPA will deduct NO_x allowances under section 10(k)(1) or section 10(k)(8) of this rule to account for the actual utilization of the unit during the ozone control period. The U.S. EPA will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO_x allowance, as appropriate, provided that the number of NO_x allowances to be deducted shall be zero (0) if the number calculated is less than zero (0):

(1) NO_x allowances deducted for actual utilization for electricity generating units = (Unit's NO_x allowances allocated for ozone control period) - (Unit's actual ozone control period utilization × fifteen one-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent).

(2) NO_x allowances deducted for actual utilization for large affected units = (Unit's NO_x allowances allocated for ozone control period) - (Unit's actual ozone control period utilization × seventeen one-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent).

where:

“Unit's NO_x allowances allocated for ozone control period” is the number of NO_x allowances allocated to the unit for the ozone control period under subdivision (5); and

“Unit's actual ozone control period utilization” is the utilization, in million British thermal units, as defined in section 2 of this rule, of the unit during the ozone control period.

(3) Any allowances remaining in the account shall be returned to the new source set-aside.

(g) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for an ozone control period, the U.S. EPA will notify the department whether any NO_x allowances remain in the allocation set-asides for the ozone control period. Any NO_x allowances not distributed from the allocation set-asides shall be returned to the new unit allocation set-aside for use in the next year's allocation.

*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-9*)

326 IAC 10-4-10 NO_x allowance tracking system

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 10. (a) The U.S. EPA will establish compliance and overdraft accounts consistent with subsection (c). NO_x allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:

- (1) Allocations of NO_x allowances pursuant to section 9 or 13(i) of this rule.**
- (2) Deductions or transfers of NO_x allowances pursuant to one (1) of the following:**
 - (A) Sections 8(d), 8(e), 11, 13, or 14 of this rule.**
 - (B) Subsections (j), (k), or (m).**

(b) The U.S. EPA will establish, upon request, a general account for any person consistent with subsection (d). Transfers of allowances pursuant to section 11 of this rule shall be recorded in the general account in accordance with this section.

(c) Upon receipt of a complete account certificate of representation under section 6(h) of this rule, the U.S. EPA will establish:

- (1) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted.**
- (2) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO_x budget units.**

(d) Any person may apply to open a general account for the purpose of holding and transferring allowances. The establishment of a general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the NO_x authorized account representative and any alternate NO_x authorized account representative:

- (i) Name.**
- (ii) Mailing address.**
- (iii) E-mail address, if any.**
- (iv) Telephone number.**
- (v) Facsimile transmission number, if any.**

(B) At the option of the NO_x authorized account representative, organization name and type of organization.

(C) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account.

(D) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of persons and that each person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account."

(E) The signature of the NO_x authorized account representative and any

alternate NO_x authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and the person. Any person having an ownership interest with respect to NO_x allowances shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(D) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (C).

(3) The following shall apply to the designation of a NO_x authorized account representative, alternate NO_x authorized account representative, or persons having an ownership interest with respect to NO_x allowances in the general account:

(A) An application for a general account may designate the following:

(i) One (1) and only one (1) NO_x authorized account representative.

(ii) One (1) and only one (1) alternate NO_x authorized account

representative who may act on behalf of the NO_x authorized account representative.

The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(B) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(C) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(D) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1).

Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(E) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of persons having an ownership interest with respect to the NO_x allowances in the account certificate of representation, the new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the U.S. EPA, as if the new person were included in the list.

(F) Within thirty (30) days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a

superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivisions (3)(C), (3)(D), (3)(E), and (3)(F), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the U.S. EPA under the NO_x budget trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(e) The U.S. EPA will assign a unique identifying number to each account established under subsection (c) or (d).

(f) Following the establishment of a NO_x allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account. The U.S. EPA will assign a unique identifying number to each NO_x authorized account representative.

(g) The U.S. EPA will record the NO_x allowances for 2004 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under section 9 of this rule. The U.S. EPA will also record the NO_x allowances allocated under section 13(i)(1) of this rule for each NO_x budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA will record NO_x allowances, as allocated to the unit under section 9 or 13(i)(2) of this rule, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the U.S. EPA will also record NO_x allowances, as allocated under section 9 of this rule, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(i) When allocating NO_x allowances to and recording them in an account, the U.S. EPA will assign each NO_x allowance a unique identification number that shall include digits identifying the year for which the NO_x allowance is allocated.

(j) The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for an ozone control period in a given year only if the NO_x allowances:

(1) were allocated for an ozone control period in a prior year or the same year; and

(2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that ozone control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO_x allowance transfer deadline for that ozone control period.

(k) The following shall apply to deductions for purposes of compliance with a unit's allocations:

(1) Following the recordation, in accordance with section 11(b) or 11(c) of this rule, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for an ozone control period, the U.S. EPA will deduct NO_x allowances available under subsection (j) to cover the unit's NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*, or to account for actual utilization under section 9(e) of this rule, for the ozone control period:

(A) from the compliance account; and

(B) only if no more NO_x allowances available under subsection (j) remain in the compliance account, from the overdraft account.

In deducting allowances for units at the source from the overdraft account, the U.S. EPA will begin with the unit having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA will deduct NO_x allowances first under subdivision (1)(A) and then under subdivision (1)(B) until:

(A) the number of NO_x allowances deducted for the ozone control period equals the number of tons of NO_x emissions, determined in accordance with 40 CFR 75, Subpart H*, from the unit for the ozone control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under section 9(e) of this rule for the ozone control period; or

(B) no more NO_x allowances available under subsection (j) remain in the respective account.

(3) The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under this section. The identification shall be made in the compliance certification report submitted in accordance with sections 8(a) through 8(c) of this rule.

(4) The U.S. EPA will deduct NO_x allowances for an ozone control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subdivision (3), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Those NO_x allowances that were allocated for the ozone control period to the unit under section 9 or 13 of this rule.

- (B) Those NO_x allowances that were allocated for the ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.
 - (C) Those NO_x allowances that were allocated for a prior ozone control period to the unit under section 9 or 13 of this rule.
 - (D) Those NO_x allowances that were allocated for a prior ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.
- (5) After making the deductions for compliance under subsections (k)(1) and (k)(2), the U.S. EPA will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for an ozone control period after the ozone control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.
- (6) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.
- (7) Any allowance deduction required under subdivision (5) shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable state law. The following guidelines shall be followed in assessing fines, penalties or other obligations:
 - (A) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for an ozone control period, each day in the ozone control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.
 - (B) Each ton of excess emissions is a separate violation.
- (8) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with 40 CFR 75, Subpart H*, the following shall apply:
 - (A) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x emissions from the common stack for an ozone control period. The identification shall be made in the compliance certification report submitted in accordance with sections 8(a) through 8(c) of this rule.
 - (B) Notwithstanding clause (2)(A), the U.S. EPA will deduct NO_x allowances for each unit, in accordance with subdivision (1), until the number of NO_x allowances deducted equals either of the following:
 - (i) The unit's identified percentage of the number of tons of NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*, from the common stack for the ozone control period for which compliance is being determined.
 - (ii) If no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual

utilization under section 9(e) of this rule for the ozone control period.

(9) The U.S. EPA will record in the appropriate compliance account or overdraft account all deductions from an account pursuant to this section.

(l) The U.S. EPA may at its own discretion and on its own motion correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA will notify the NO_x authorized account representative for the account.

(m) The NO_x authorized account representative of a general account may instruct the U.S. EPA to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under section 11(a) of this rule, an allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

(n) If a general account shows no activity for a period of one (1) year or more and does not contain any NO_x allowances, the U.S. EPA may notify the NO_x authorized account representative for the account that the account shall be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) business day period unless before the end of the twenty (20) business day period the U.S. EPA receives a correctly submitted transfer of NO_x allowances into the account under section 11(a) or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-10*)

326 IAC 10-4-11 NO_x allowance transfers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 11. (a) The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the U.S. EPA:

- (1) The numbers identifying both the transferor and transferee accounts.
- (2) A specification by serial number of each NO_x allowance to be transferred.
- (3) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

(b) Within five (5) business days of receiving a NO_x allowance transfer, the U.S. EPA will record a NO_x allowance transfer by moving each NO_x allowance from the transferor

account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under subsection (a).
- (2) The transferor account includes each NO_x allowance identified by serial number in the transfer.
- (3) The transfer meets all other requirements of this section.

A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for an ozone control period prior to, or the same as, the ozone control period to which the NO_x allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO_x allowance allocations in section 10(h) of this rule.

(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record the transfer.

(d) The following notification requirements shall apply to NO_x allowance transfers:

- (1) Within five (5) business days of recordation of a NO_x allowance transfer under subsection (b), the U.S. EPA will notify each party to the transfer. Notice shall be given to the NO_x authorized account representatives of both the transferor and transferee accounts.
- (2) Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the NO_x authorized account representatives of both the transferor and transferee accounts subject to the transfer of the following:
 - (A) A decision not to record the transfer.
 - (B) The reasons for non-recordation.

(e) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation. (*Air Pollution Control Board; 326 IAC 10-4-11*)

326 IAC 10-4-12 NO_x monitoring and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 12. (a) The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H*. For purposes of complying with the requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the terms NO_x budget unit, NO_x authorized account representative, and continuous emission monitoring system (CEMS), respectively, as defined in section 2 of this rule.

(b) The owner or operator of each NO_x budget unit and a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in section 13 of this rule must meet the following requirements:

- (1) Install all monitoring systems required under this subpart for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR 75.71* and 40 CFR 75.72*.**
- (2) Install all monitoring systems for monitoring heat input, if required under subsection (q) for developing NO_x allowance allocations.**
- (3) Successfully complete all certification tests required under subsections (e) through (k) and meet all other provisions of this section and 40 CFR 75* applicable to the monitoring systems under subdivisions (1) and (2).**
- (4) Record and report data from the monitoring systems under subdivisions (1) and (2).**

(c) The owner or operator must meet the requirements of subsections (b)(1) through (3) on or before the following dates and must record and report data on and after the following dates:

- (1) NO_x budget units for which the owner or operator intends to apply for early reduction credits under section 15(c) of this rule must comply with the requirements of this section by May 1 of the year prior to the year in which early reduction credits will be generated.**
- (2) Except for NO_x budget units under subdivision (1), NO_x budget units that commence operation before January 1, 2003, must comply with the requirements of this section by May 31, 2004.**
- (3) NO_x budget units that commence operation on or after January 1, 2003 and that report on an annual basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:**
 - (A) May 31, 2004.**
 - (B) The earlier of:**
 - (i) one hundred eighty (180) days after the date on which the unit commences operation; or**
 - (ii) for electricity generating units, ninety (90) days after the date that the unit commences commercial operation.**
- (4) NO_x budget units that commence operation on or after January 1, 2003 and that report on a control season basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:**
 - (A) The earlier of:**
 - (i) one hundred eighty (180) days after the date on which the unit commences operation; or**
 - (ii) for electricity generating units, ninety (90) days after the date on which the unit commences commercial operation.**
 - (B) If the applicable deadline under clause (A) does not occur during an ozone control period, May 1 immediately following the date determined in accordance with clause (A).**
- (5) For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision (1), (2), or (3) or section 13 of this rule, compliance by the later of the following dates:**
 - (A) Ninety (90) days after the date that emissions first exit to the atmosphere through the new stack or flue.**
 - (B) If the unit reports on a control season basis under subsection (o)(4) and the**

applicable deadline under clause (A) does not occur during the ozone control period, May 1 immediately following the applicable deadline in clause (A).

(6) For a unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under section 13 of this rule.

(d) The owner or operator of a NO_x budget unit that misses the certification deadline under subsection (c)(1):

- (1) is not eligible to apply for early reduction credits under section 15 of this rule; and
- (2) becomes subject to the certification deadline under subsection (c)(2).

(e) The owner or operator of a NO_x budget under subsection (c)(3) or (c)(4) must determine, record and report NO_x mass, heat input, if required for purposes of allocations, and any other values required to determine NO_x mass, for example NO_x emission rate and heat input or NO_x concentration and stack flow, using the provisions of 40 CFR 75.70(g)*, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(f) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with subsection (p).

(2) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all the emissions in accordance with the applicable provisions of this rule and 40 CFR 75* except as provided for in 40 CFR 75.74*.

(3) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall disrupt the CEMS, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule and 40 CFR 75* except as provided for in 40 CFR 75.74*.

(4) No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii)* shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emission monitoring system under this section, except under one (1) of the following circumstances:

(A) During the period that the unit is covered by a retired unit exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this rule and 40 CFR 75*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired

or discontinued monitoring system.

(C) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subsection (h)(2).

(g) The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75*, except that:

(1) If, prior to January 1, 1998, the U.S. EPA approved a petition under 40 CFR 75.17(a) or 40 CFR 75.17(b)* for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.17*, the NO_x authorized account representative shall resubmit the petition to the U.S. EPA under subsection (p)(1) to determine if the approval applies under the NO_x budget trading program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR 75.72*, or for any NO_x concentration CEMS used under the provisions of 40 CFR 75.71(a)(2)*, the owner or operator shall meet the requirements of subsection (h).

(h) The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19* shall also meet the requirements of subsection (i) and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall also meet the requirements of subsection (j). The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72*, or that uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2)* also shall comply with the following initial certification and recertification procedures:

(1) The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H*, that includes the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20*. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection (c). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no monitoring system was previously installed, initial certification according to 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS that the U.S. EPA or the department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the U.S. EPA or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b)*. Examples of changes that require recertification include replacement

of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Requirements for the certification approval process for initial certifications and recertification are as follows:

(A) The NO_x authorized account representative shall submit to the appropriate U.S. EPA regional office and the department a written notice of the dates of certification in accordance with subsection (n).

(B) The NO_x authorized account representative shall submit to the department a certification application for each CEMS required under 40 CFR 75, Subpart H*. A complete certification application shall include the information specified in 40 CFR 75, Subpart H*.

(C) Except for units using the low mass emission excepted methodology under 40 CFR 75.19*, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3)*. A provisionally certified monitor may be used under the NO_x budget trading program for a period of time not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the CEMS or associated component thereof under clause (B). Data measured and recorded by the provisionally certified CEMS or associated component thereof, in accordance with the requirements of 40 CFR 75*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue a notice within the one hundred twenty (120) day period, each CEMS that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the NO_x budget trading program. The issuance of notices shall be as follows:

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) A certification application shall be considered complete when all of the applicable information required to be submitted under clause (B) has been received by the department. If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the

specified date, then the department may issue a notice of disapproval under item (iii).

(iii) If the certification application shows that any CEMS or associated component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under item (ii) has been met, the department shall issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified CEMS or associated component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in clause (E) for each CEMS or associated component thereof which is disapproved for initial certification.

(iv) The department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (m).

(i) If the department issues a notice of disapproval of a certification application under subsection (h)(3)(D)(iii) or a notice of disapproval of certification status under subsection (h)(3)(D)(iv), then the following shall apply:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i)* and the following:

(A) For units monitoring or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19*;

- (i) the maximum potential NO_x emission rate; and
- (ii) the maximum potential hourly heat input of the unit.

(B) For units monitoring or intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor;

- (i) the maximum potential concentration of NO_x; and
- (ii) the maximum potential flow rate of the unit under 40 CFR 75, Appendix A, Section 2.1*.

(2) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subsections (h)(3)(A) and (h)(3)(C).

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(j) The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19* shall meet the applicable general operating requirements of 40 CFR 75.10*, the applicable requirements of 40 CFR 75.19*, and the

applicable certification requirements of subsections (e) through (i) and (k), except that the excepted methodology shall be deemed provisionally certified for use under the NO_x budget trading program, as of the following dates:

(1) For units that are reporting on an annual basis under subsection (o)(4) that commenced operation:

(A) before its compliance deadline under subsection (c), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19* until the completion of the period for department review; or

(B) after its compliance deadline under subsection (c), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19* until the completion of the period for department review.

(2) For units that are reporting on an ozone control period basis under subsection (o)(4)(B)(ii):

(A) that commenced operation before its compliance deadline under subsection (c) where the certification application is submitted:

(i) before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19* until the completion of the period for the department's review;

(ii) after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19* until the completion of the period for the department's review;

(B) that commences operation after its compliance deadline under subsection (c), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the department's review; or

(C) that has not operated after its compliance deadline under subsection (c), where the certification application is submitted after May 1, but before October 1, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19* until the completion of the period for the department's review.

(k) The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall apply to the department for certification prior to use of the system under the NO_x trading program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection (h). The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subsection (h)(3) and 40 CFR 75.20(f)*.

(l) Whenever any monitoring system fails to meet the quality assurance requirements

of 40 CFR 75, Appendix B*, data shall be substituted using the applicable procedures in 40 CFR 75, Subpart D*; 40 CFR 75, Appendix D*; or 40 CFR 75, Appendix E*.

(m) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or associated component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (e) through (k) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of the system or associated component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the U.S. EPA or the department. By issuing the notice of disapproval, the department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsections (e) through (k) for each disapproved system.

(n) The NO_x authorized account representative for a NO_x budget unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61*, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the department.

(o) The NO_x authorized account representative shall comply with all record keeping and reporting requirements in this subsection and with the requirements of section 6(e) of this rule as follows:

(1) If the NO_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under 40 CFR 75, Subpart F* or 40 CFR 75, Subpart G* and that includes data and information required under this section or 40 CFR 75, Subpart H* is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72*, the submission must also be signed by the designated representative or the alternative designated representative.

(2) The owner or operator of a NO_x budget unit shall comply with the following monitoring plan requirements:

(A) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62*, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H*.

(B) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62*, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H*.

(3) The NO_x authorized account representative shall submit an application to the

department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (e) through (k) including the information required under 40 CFR 75, Subpart H*.

(4) The NO_x authorized account representative shall submit quarterly reports as follows:

(A) If a unit is subject to an acid rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of this section, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

- (i) the units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or
- (ii) the units commencing operation prior to May 31, 2004, that are not required to certify monitors by May 1 prior to the year in which early reduction credits are generated under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 31, 2004, the partial calendar quarter from May 31, 2004 through June 30, 2004. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 31, 2004; or
- (iii) for a unit that commences operation after May 31, 2004, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(B) If a NO_x budget unit is not subject to an acid rain emission limitation, then the NO_x authorized account representative shall do either the following:

- (i) Meet all of the requirements of 40 CFR 75* related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in clause (A)(i).
- (ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3)* through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b)*. The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(AA) the units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(BB) the units commencing operation prior to May 1, 2002, that are not required to certify monitors by May 1, 2001 under

section (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; (CC) for units that commence operation after May 1, 2002, during the ozone control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; (DD) for units that commence operation after May 1, 2002, and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation. (EE) for units that commence operation after May 1, 2002, and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(C) The NO_x authorized account representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75, Subpart H* and 40 CFR 75.64* and the following:

- (i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR 75, Subpart H* for each NO_x budget unit, or group of units using a common stack, as well as information required in 40 CFR 75, Subpart G*.
- (ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR 75, Subpart H* for each NO_x budget unit, or group of units using a common stack.

(D) The NO_x authorized account representative shall submit to the department and the U.S. EPA a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

- (i) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications; and**
- (ii) for a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and**
- (iii) for a unit that is reporting on an ozone control period basis under subsection (o)(4), the NO_x emission rate and NO_x concentration values substituted for missing data under 40 CFR 75, Subpart D* are calculated using only values from an ozone control period and do not systematically underestimate NO_x emissions.**

(p) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section.

(A) Application for an alternative to any requirement of this section is in accordance with this subsection only to the extent that the petition is approved by the U.S. EPA, in consultation with the department.

(B) Notwithstanding subdivision (1), if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72*, the petition is governed by subdivision (2).

(2) The NO_x authorized account representative of a NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section.

(A) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72* or a NO_x concentration CEMS used under 40 CFR 75.71(a)(2)*.

(B) Application of an alternative to any requirement of this section is in accordance with this section only to the extent the petition under this subsection is approved by both the department and the U.S. EPA.

(q) The following shall apply to the monitoring and reporting of NO_x mass emissions:

(1) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75* for any source that has source allocations based upon heat input.

(2) The owner or operator of a unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75* for any source that is applying for early reduction credits under section 15(b) of this rule.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-12*)**

326 IAC 10-4-13 Individual opt-ins

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 13. (a) A unit may qualify to become a NO_x budget opt-in source under this section, if the unit meets the following requirements:

(1) Is not a NO_x budget unit under section 1 of this rule.

(2) Has all of its emissions vented to a stack.

(3) Is currently operating.

A unit that is a NO_x budget unit, is covered by an exemption under section 1(b) of this rule or a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO_x budget opt-in source.

(b) Except otherwise as provided in this rule, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying sections 1 through 12 and 14 of this rule.

(c) A unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

(d) In order to apply for an initial NO_x budget opt-in permit, the NO_x authorized account representative of a unit qualified under subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:

(1) A complete NO_x budget permit application under section 7(c) of this rule.

(2) A monitoring plan submitted in accordance with section 12 of this rule.

(3) A complete account certificate of representation under section 6(h) of this rule, if no NO_x authorized account representative has been previously designated for the unit.

The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under section 7(c) of this rule to renew the NO_x budget opt-in permit in accordance with section 7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.

(e) The department shall issue or deny a NO_x budget opt-in permit for a unit for which an initial application for a NO_x budget opt-in permit under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:

(1) The department shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in permit under subsection (d). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under section 12 of this rule, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with section 12 of this rule for one (1) full ozone control period during which monitoring system availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO_x budget unit prior to issuance of a NO_x budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the ozone control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions, in pounds, for the ozone control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivision (3), the department shall serve a draft NO_x budget opt-in permit on the NO_x authorized account representative of the unit.

(5) Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.

(6) If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO_x budget opt-in permit in accordance with section 7(a) of this rule.

(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO_x budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO_x budget opt-in source under subsection (a), the department shall issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under subsection (d) at any time prior to the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under subsection (d).

(9) The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of the initial NO_x budget opt-in permit by the department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

(f) The following shall apply to the content of a NO_x budget opt-in permit:

(1) Each NO_x budget opt-in permit, including any draft or proposed NO_x budget opt-in permit, if applicable, shall contain all elements required for a complete NO_x budget opt-in permit application under section 7(c) of this rule as approved or adjusted by the department.

(2) Each NO_x budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 1 of this rule and, upon recordation by the U.S. EPA under sections 10, 11, and 13 of this rule, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO_x budget trading program:

(1) The NO_x authorized account representative of a NO_x budget opt-in source shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(2) Before a NO_x budget opt-in source covered by a request under subdivision (1) may withdraw from the NO_x budget trading program and the NO_x budget opt-in permit may be terminated under subdivision (6), the following conditions must be met:

(A) For the ozone control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO_x budget opt-in source has excess emissions for the ozone control period immediately before the withdrawal is to be effective, the U.S. EPA will deduct or have deducted from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, the full amount required under sections 10(k)(5) through 10(k)(7) of this rule for the ozone control period.

(C) After the requirements for withdrawal under subdivisions (1) and (2) are met, the U.S. EPA will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO_x allowances

allocated to that source under subsection (j) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO_x budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(3) A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which the NO_x budget opt-in source was a NO_x budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO_x allowances required, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x budget opt-in source as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under subdivision (1). A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

(7) If the department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in permit under subsection (d) for the unit prior to the date that is four (4) years after the date on which the terminated NO_x budget opt-in permit became effective.

(h) When a NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the NO_x authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO_x budget opt-in source's regulatory status, within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning a NO_x budget opt-in source:

(1) When the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the department shall revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x budget permit under sections 7(d) and

7(e) of this rule as of an effective date that is the date on which the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as follows:

(A) Any NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO_x budget opt-in permit was effective.

(B) If the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(3) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(4) For every ozone control period during which the NO_x budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO_x budget unit under subdivision (1) shall be treated, solely for the purposes of NO_x allowance allocations under sections 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO_x budget permit revision under subdivision (1) and shall be allocated NO_x allowances under sections 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the following number of NO_x allowances shall be allocated to the NO_x budget unit. The number of NO_x allowances otherwise allocated to the NO_x budget unit under sections 9(c) through 9(e) of this rule for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(5) When the NO_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subsection (d), the U.S. EPA will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior ozone control period as any NO_x allowances allocated to the NO_x budget opt-in source under subsection (i) for any ozone control period after the last ozone control period for which the NO_x budget opt-in permit is effective. The NO_x authorized account representative

shall ensure that the NO_x budget opt-in source's compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO_x budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under sections 10(j) and 10(k) of this rule, the U.S. EPA will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining allowances to a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(i) The department shall allocate NO_x allowances to a NO_x budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO_x budget opt-in permit is effective, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA the allocation for the ozone control period in accordance with subdivision (3).

(2) By no later than December 31, after the first ozone control period for which the NO_x budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO_x allowances to the NO_x budget opt-in source, and submit to the U.S. EPA allocations for the next ozone control period, in accordance with subdivision (3).

(3) For each ozone control period for which the NO_x budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source shall be allocated NO_x allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO_x allowance allocations shall be the lesser of the following:

(i) The NO_x budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO_x budget opt-in source's heat input, as determined in accordance with section 12 of this rule, for the ozone control period in the year prior to the year of the ozone control period for which the NO_x allocations are being calculated.

(B) The department shall allocate NO_x allowances to the NO_x budget opt-in source in an amount equaling the heat input, in million British thermal units, determined under clause (A) multiplied by the lesser of the following:

(i) The NO_x budget opt-in source's baseline NO_x emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3).

(ii) The most stringent state or federal NO_x emissions limitation applicable to the NO_x budget opt-in source during the ozone control

period.

***Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-4-13)**

326 IAC 10-4-14 NO_x allowance banking

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 14. (a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account unless and until the NO_x allowance is deducted or transferred under:

(A) sections 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or

(B) subsection (b).

(2) The U.S. EPA will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the U.S. EPA has made all deductions for a given ozone control period from the compliance account or overdraft account pursuant to sections 10(j) and 10(k) of this rule, 40 CFR 97*, or a federal implementation plan.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO_x allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO_x allowances may be used for compliance in the ozone control period for the current year, as follows:

(1) The U.S. EPA will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked NO_x allowance may be deducted for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA will determine the following ratio:

(i) One tenth (0.10) multiplied by the sum of the trading program budget for the ozone control period.

(ii) Divided by the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft

accounts, or general accounts.

(B) The U.S. EPA will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO_x allowances are used to make a deduction, two (2) NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under section 10(k) of this rule.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-4-14)**

326 IAC 10-4-15 Compliance supplement pool

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 15. (a) The department may allow sources required to implement NO_x emission control measures by May 31, 2004 and subject to this rule, to demonstrate compliance in the 2004 and 2005 ozone seasons using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2005 ozone season.

(b) The department may distribute NO_x allocations from the compliance supplement pool to NO_x budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue credits to NO_x budget units that implement emissions reductions beyond all applicable requirements during the ozone season in 2002 and 2003 according to the following provisions:

(A) The department shall complete the issuance process by no later than March 31 of the year after the control measures were implemented.

(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP), state law or rule, or be otherwise required by the Clean Air Act (CAA).

(C) The emissions reduction must be verified by the source as actually having occurred during an ozone season in 2002 and 2003.

(D) Each NO_x budget unit for which the owner or operator requests any early reduction credits under this section shall monitor NO_x emissions in accordance with 40 CFR 75, Subpart H* starting in the ozone control period prior to the ozone control period for which the early reduction credits are requested and for each ozone control period for which the early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent

(90%) during the ozone control period prior to the ozone control period for which the early reduction credits are requested, and the unit must be in compliance with any applicable state or federal NO_x emissions or emissions-related requirements during the ozone control period for which the early reduction credits are requested.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H*.

(F) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of clauses (B) through (D) may submit to the department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the ozone control period for 2002 and 2003. The request shall include the following:

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for the ozone control period in an amount equal to the unit's heat input for the ozone control period multiplied by the difference between the following:

(AA) The unit's actual average NO_x emission rate in the ozone control period prior to the first ozone control period for which the early reduction credits are requested.

(BB) The unit's NO_x emission rate for the ozone control period in which the early reductions occurred, divided by two thousand (2,000) pounds per ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or a later date approved by the department.

(G) The department shall allocate NO_x allowances from the compliance supplement pool, to NO_x budget units meeting the requirements of this subdivision, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of clauses (B) through (D) and (F)(ii) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of clauses (B) through (D).

(ii) If the compliance supplement pool has an amount of NO_x allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for 2002 and 2003, as adjusted under item (i), the department shall allocate to each NO_x budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under item (i).

(iii) If the compliance supplement pool has an amount of NO_x allowances less than the number of early reduction credits in all accepted early reduction credit requests for 2002 and 2003, as adjusted under item (i), the department shall allocate NO_x allowances to each NO_x budget unit

covered by the accepted requests according to the following formula, A unit's allocated early reduction credits = ((unit's adjusted early reduction credits) ÷ (total adjusted early reduction credits requested by all units)) × (available NO_x allowances from the compliance supplement pool) where:

(AA) Unit's adjusted early reduction credits is the number of early reduction credits for the unit for 2002 and 2003 in accepted early reduction credit requests, as adjusted under item (i).

(BB) Total adjusted early reduction credits requested by all units is the number of early reduction credits for all units for 2002 and 2003 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO_x allowances from the compliance supplement pool is the number of NO_x allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By March 31 of the year following the request, the department shall submit to the U.S. EPA the allocations of NO_x allowances determined under clause (G). The U.S. EPA will record the allocations to the extent that they are consistent with the requirements of clauses (B) through (G).

(I) NO_x allowances recorded under clause (H) may be deducted for compliance under section 10(k) for the ozone control periods in 2004 or 2005.

Notwithstanding section 14(a), the U.S. EPA will deduct as retired any NO_x allowance that is recorded under clause (G) and is not deducted for compliance in accordance with section 10(k) of this rule for the ozone control period in 2004 or 2005.

(J) NO_x allowances recorded under clause (G) are treated as banked allowances in 2005 for the purposes of sections 14(a) and 14(b).

(K) Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in this rule.

(2) The department may issue to NO_x budget units that demonstrate a need for an extension of the May 31, 2004, compliance deadline according to the following provisions:

(A) The department shall initiate the issuance process by the later date of September 30, 2002, or after the department issues credit according to the procedures in subdivision (1).

(B) The department shall complete the issuance process by no later than May 31, 2004.

(C) The department shall issue credit to a source only if the source demonstrates the following:

(i) For electricity generating units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from

other electricity generation systems during the installation of control technologies necessary to comply with this rule.

(ii) For large affected units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).

(iii) For a unit subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a unit subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(D) The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a NO_x budget unit under subdivision (C).

(c) The total number of NO_x allowances available from the compliance supplement pool shall not exceed nineteen thousand nine hundred fifteen (19,915) tons of NO_x. No more than fifty percent (50%) of the compliance supplement pool shall be allocated in 2003 for early reduction implemented in 2002. The remainder of the compliance supplement pool shall be allocated in 2004 for early reduction implemented in 2003 and any demonstrations of need. Any NO_x allowances that remain in the compliance supplement pool after the 2005 ozone control period shall be retired.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board*; 326 IAC 10-4-15)**

TITLE 326 AIR POLLUTION CONTROL BOARD

#00-137(APCB)

On December 1, 2000, IDEM published draft rules for the reduction of nitrogen oxide (NO_x) emissions from certain industrial sources. In response to the publication of the Second Notice of Comment Period, IDEM received over three hundred (300) letters from the regulated industry and concerned citizens, including many received after the comment period deadline.

This document includes a list of comments submitted by the January 2, 2001, deadline, a summary of the issues and questions raised in those comments, and the department's response. Comments submitted after the comment period deadline are not listed or summarized here, but few, if any, issues were raised in the late comments that were not also addressed in comments submitted by the deadline. IDEM appreciates the great amount of interest expressed by the public in this rulemaking and the many thoughtful suggestions commenters have provided.

There are many complex technical and policy issues raised in this rulemaking. In this Response to Comments and in the draft rule language IDEM is issuing in advance of the February 7, 2001, air pollution control board meeting, IDEM has tried to address as many comments as possible, while staying mindful of the fact that Indiana's rule must ultimately be approved by U.S. EPA as consistent with the federal NO_x control program. While attempting to advance the debate and begin to narrow the list of issues still under discussion, IDEM has included draft rule language on a number of controversial issues. We fully expect that the public debate on those issues will continue after the February 7 air pollution control board meeting.

Following is a summary of how the draft rule language addresses the various issues related to the trading budget.

The Trading Budget

Since the Second Notice was published, IDEM has had discussions with U.S.EPA about the trading budget, especially for nonEGUs. IDEM has also considered a number of issues related to the allowance allocation formula. This issue has been the subject of many of the comments from the public and regulated sources, and raises a number of policy issues. Key issues related to the budget include:

- \$ How large is the EGU trading budget? How large is the nonEGU trading budget?
- \$ Should the budgets be kept separate for distribution to EGUs and nonEGUs or should they be combined?
- \$ Whether, and how many, tons should be set aside from the EGU and the nonEGU totals for distribution to new sources?

- \$ Whether, and how many, tons should be set aside from the EGU and the nonEGU totals for distribution to energy efficiency or renewable energy projects (EE/RE)?
- \$ Should units that are currently shut down, but operated at some point during the 1995-9 period on which allocations are based, be allocated allowances for the first allocation period?
- \$ Should the allocations be based on a straight emission rate (.15 lb/mmBtu for EGUs and .17 lb/mmBtu for nonEGUs) regardless of a unit's historical or allowable emission rate, or should the allocations be based on the stricter of those rates?
- \$ Using U.S.EPA's methodology for allocations, some units do not need to control and in fact would receive allocations in excess of what their expected emissions are. Should those "excess" allowances be allocated to those units or should they be used to offset costs for companies that will have to install controls under the rule, or for new sources?

IDEM expects further discussion on these issues, but has laid out in this draft rule an approach for distributing the total trading budget.

Based on U.S. EPA and IDEM's calculations, Indiana's trading budget is as follows:

	<u>EGUs</u>	<u>nonEGUs</u>
Trading budget	45952 tons	11107 tons
New source set aside	2298 (5% for 2004-6) [919 (2% after 2006)]	111 (1%)
EE/RE set aside		1141 (2% of total trading budget)
Tons available for distribution to existing sources	43654 (2004-6) [45033 (after 2006)]	9855

Allocations. The draft rule states that for the first allocation period (2004-6), existing EGUs will receive allowances based on the average of each unit's highest two years of heat input between 1995-1999 multiplied by .15 lb/mmBtu or their allowable emission rate, whichever is more stringent. Any allowances left after this distribution is made are distributed to all EGU units pro rata.

For the first allocation period, existing nonEGUs will receive allowances based on the average of each unit's highest two years of heat input between 1995-1999 multiplied by .17 lb/mmBtu or the unit's "baseline emission rate," whichever is lower. The baseline emission rate is the unit's average ozone season emission rate for the period 1995-1999. As with the EGUs, any allowances left over after the initial distribution is made are distributed to all nonEGU units pro rata. Because of the wide range in

emission rates among Indiana's nonEGUs (some operate at an emission rate considerably above U.S. EPA's presumptive .17 lb/mmBtu and others considerably below), the result is that some sources will be required to install control equipment and/or purchase allowances and others will receive allowances in excess of what they need to operate and be able to sell or trade them. IDEM will continue to evaluate the allocation methodology for these sources to provide as fair and cost-effective a system as possible.

One way to address the issue of the potential disparity in allocations to nonEGUs is to use the more stringent emission rate to determine allowances as the draft rule states. Sources that have historically operated at a level below U.S. EPA's presumptive rate or are limited by a permit to a lower rate will not incur the costs of installing control equipment and would deriving a pure economic benefit from the rule. Distributing those allowances to sources that will be required to install control equipment helps lower the costs of those controls to the companies and, ultimately, to consumers. Another approach would be to use a different (higher) presumptive emission rate for calculating allowances for units whose actual emission rate is substantially higher than 0.17 lb/mmBtu and for whom meeting the 0.17 lb/mmBtu emission rate would require greater than sixty percent (60%) reduction in emissions. IDEM welcomes specific comment on this issue.

IDEM's approach includes the distribution of allowances to shut down units, as long as they operated at least one season during the 1995-1999 period. This approach is similar to the treatment of retired units in the rule, whereby a shut down or retired unit continues to receive allowances until it no longer appears as an operating unit in the period IDEM uses to determine allocations in future periods.

New source set-aside. IDEM has recommended that a single set-aside pool for new sources (both EGU and nonEGU) be created. New sources would apply each December for allowances to be used in the upcoming ozone season until the units can use allowances as an existing unit. Having an annual application process assures that all new sources have an equal opportunity to seek allowances and avoids a situation where the new sources that are "first in line" receive all the allowances leaving none for new sources in subsequent years. Having a single pool means that set-aside allowances will not go unused if there are not sufficient new projects in either the EGU or nonEGU category. IDEM has proposed the size of the new source set aside by balancing information about new projects that are in the application process now, historical trends of growth, and expected costs of the control program for existing sources.

Energy Efficiency/Renewable Energy set-aside. IDEM has included a set-aside pool for EE/RE projects in an amount equal to two percent (2%) of the trading budget. This amount is considered more than sufficient in the first years of this program to provide incentives for innovative energy saving

projects. Any tons not allocated for a given ozone season would become available for new sources seeking allowances for that season. IDEM believes that there is flexibility in the nonEGU budget to permit dedicating these tons to EE/RE projects without increasing costs to nonEGUs over what they would have been without the set-aside.

Compliance Supplement Pool

Another issue of great interest to commenters is the compliance supplement pool (CSP). In the Second Notice of Comment Period, IDEM had proposed to partition the CSP between EGUs and nonEGUs and reserve a portion for demonstration of need. The draft rule now provides a single pool for all sources. Up to fifty percent (50%) of the CSP would be available for early reduction credits generated in 2002 and the remaining amount would be available for credits generated in 2003 and demonstrations of need.

IDEM will continue to discuss these issues, as well as others addressed in detail in the remainder of this document, with interested parties as the rulemaking process continues.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from December 1, 2000, through January 2, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Aluminum Company of America	(ALCOA)
American Electric Power	(AEP)
Bradley D. Barhyatt	(BDB)
Denise L. Benson	(DLB)
Bethlehem Steel Corporation	(BSC)
Stephanie Bode	(SB)
Shirley J. Carr	(SJG)
Cinergy Corporation	(CIN)
Citizens Action Coalition of Indiana	(CACI)
Citizens Thermal Energy	(CTE)
Clean Air Action Corporation	(CAAC)
Heather Cox	(HC)
EnviroPower of Indiana	(EPI)
John Everitt	(JE)
Chet Foster	(CF)

Mark Grable	(MG)
Kim Grayson	(KG)
George Grosskopf	(GG)
Lori Hall	(LH)
Bill Hayden	(BH)
Laura A. Henderson	(LAH)
Amy Holly	(AH)
Hoosier Energy REC, Incorporated	(HE)
Hoosier Environmental Council	(HEC)
Joseph and Donna Huber	(JDH)
Indiana Coal Council, Incorporated	(ICC)
Indiana Division-Izaak Walton League of America	(IWLA)
Indiana Manufacturers Association	(IMA)
Indiana Municipal Power Agency	(IMPA)
Indiana Petroleum Council	(IPC)
Indiana-Kentucky Electric Corporation	(IKEC)
Indianapolis Power and Light	(IPL)
Ispat Inland Incorporated	(III)
Lisa Jackson	(LJ)
Gary Kah	(GK)
Jenine Kemp	(JK)
Judy Kreger	(JK)
Don Landers	(DL)
Allen R. Lauer, Senior	(ARL)
Mike Leckrone	(ML)
Jodi Liebeno	(JL)
Nancy Little	(NL)
B. J. Loudreth	(BJL)
LTV Steel Company, Incorporated	(LTV)
Deanna Maddox	(DM)
Barbara McGraw	(BM)
Midwest Independent Power Suppliers Coordination Group	(MWIPS)
Scott Montgomery	(SM)
Natural Resources Defense Council	(NRDC)
NiSource	(NS)
Kim Pallikan	(KP)
Mary K. Paynter	(MKP)

Kelli Polloch	(KPH)
Alan Ponto	(AP)
Primary Energy, Incorporated	(PEI)
Purdue University	(PU)
Richmond Power and Light Company	(RPL)
Brad Roberts	(BR)
Phillip and Jean Ross	(PJR)
Donna Runkle	(DR)
Carole Rust	(CR)
Jeff Ryan	(JR)
Save the Dunes Council	(SDC)
Save the Valley	(STV)
Sierra Club-Hoosier Chapter	(SCHC)
Melvin L. Smith	(MLS)
LaCinda Sohalski	(LS)
State Line Energy	(SLE)
Tim Stelle	(TS)
Marti Steussy	(MS)
Cindy Stone	(CS)
Jeff and Sue Testin	(JST)
Konda Thomas	(KT)
U.S. Steel Group	(USS)
John Ulmer	(JU)
Valley Watch, Incorporated	(VWI)
Vectren Corporation	(VC)
Roger Voelker	(RV)
E. M. Whirter	(EMW)
Indiana Electric Utility Air Work Group	(IEUAWG)
Pike County Economic Growth Council	(PCEGC)
Vanderburgh County Department of Health	(VCDH)

Following is a summary of the comments received and IDEM's responses thereto.

Trading Program - General

Comment: IDEM should adopt a NO_x trading program consistent with U.S. EPA's model trading program in the NO_x SIP call. The following limitations should be included in the program:

- Automatic inclusion in the program for electric utility boilers and large industrial boilers.
- No broadening of the program to include smaller and less-well monitored stationary sources and mobile sources.
- No opt-in provisions for smaller and less-well monitored sources.
- No expansion of the program to allow for inter-pollutant trading between NO_x, volatile organic compounds (VOCs) or any other pollutant. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: The draft rules include a trading program that affects utility and large industrial boilers and does not allow for inter-pollutant trading. The program does allow for other units to opt-in to the program as long as the same monitoring requirements are followed.

Comment: IDEM should require a very large proportion of the NO_x emission reductions from the electric power sector. U.S. EPA's analysis demonstrates that the emission reductions can be achieved more reliably and at lower cost from this sector than in other sectors. In addition, the emission limit should be expressed as a firm emission tonnage cap to prevent erosion of air quality benefits due to growth in electric power generation. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: The draft rule includes U.S. EPA's model NO_x trading program that establishes a cap or budget for electric generating and large industrial units and significant emission reductions will be needed from utility sources to meet the NO_x budget.

Comment: Purdue supports the implementation schedule in the rule that sets the first year as a four (4) month program, while setting allocations on the basis of a five (5) month program. This allows for more flexibility in the first year. (PU)

Response: IDEM appreciates the support.

Comment: IDEM should work to develop a NO_x rulemaking that adheres to the federal requirements as they relate to any NO_x budget. (ALCOA)

Response: The draft rule language proposed by IDEM is consistent with U.S. EPA's budget.

Comment: IDEM should combine the EGU and nonEGU budgets and allocate the allowances from the combined NO_x budget, and not according to whether a unit is within the EGU or nonEGU subsets. (MWIPS) (EPI)

Response: IDEM does not believe the budgets should be combined for allocations to existing sources, but has proposed combining the new source set-asides. Maintaining separate budgets is the fairest way to distribute the allowances to ensure both EGUs and nonEGUs achieve reductions in the most cost-effective way. Any excess allowances in the budget may be used for new source set-asides, other policy objectives such as to encourage energy efficiency or renewable energy projects or may be

made available in the market.

Comment: IDEM should maintain a program that allows interstate trading. (III)

Response: The trading program included in the draft rule is a regional trading program administered by U.S. EPA.

Comment: IDEM should allow NO_x allocations under this rule to be used for NO_x offsets under 326 IAC 2-3. (III)

Response: In the NO_x SIP call, U.S. EPA indicated that it believed the trading program could be used to obtain NO_x offsets (63 FR 57475), but identified issues with the integration of the programs. One issue is the requirement to obtain offsets from certain geographic areas. U.S. EPA stated that it will evaluate the issues and provide guidance on the integration of the programs.

Comment: IDEM should include language in the rule that would allow non-budget sources that make verifiable and quantifiable reductions to receive allowances equivalent to those reductions. Other states have taken this approach to increase flexibility and cost savings. This is not an opt-in, in that, the sources would not choose to be regulated, but rather a voluntary program. This program would allow for greater reductions from non-budget sources that could be used to provide more flexibility for budget sources. (CAAC)

Comment: IDEM should bring other source categories such as mobile and area sources into the NO_x budget trading program. By doing so, the trading program would provide additional flexibility for affected sources to obtain early reduction credit relief while installing NO_x emission controls to comply with the NO_x SIP call requirements. (IPL) (VCDH)

Response: U.S. EPA requested comment concerning mobile and area sources and allowing them in the trading program. Due to the comments received and the issues raised, U.S. EPA decided not to include these categories in the trading program. IDEM agrees with the principle that broadening the trading program to allow other sectors to participate on a voluntary basis could provide an incentive for cost-effective NO_x reductions that would lower the overall costs of this program. IDEM has taken the first step in this direction by including a provision for sources to opt in as trading units, but recognizes that only certain types of sources will meet U.S. EPA's criteria. Some states already have trading programs in place and propose to use existing regulatory mechanisms as a way for sources that cannot opt in under U.S. EPA's rules to participate in the trading program. IDEM will continue to work with interested parties to identify additional reductions that may be used in the trading program.

Comment: The draft rule lacks a valid scientific basis as required by IC 13-7-1-3 and there is concern that scientific knowledge regarding ozone transport does not support this rule. Previous correspondence from IDEM seems to indicate the department has shared this concern. It is unclear

whether IDEM is adopting a new position about the level of controls or simply responding to U.S. EPA regulatory mandates. If IDEM is not taking a new position about the levels of control that can be demonstrated by any available science, then this should be made known. If IDEM has undertaken a new evaluation of the scientific merits of the rule and has independently concluded that the proposed control level is necessary, there are a number of concerns with the modeling and the scientific and statistical validity of U.S. EPA's estimates. IDEM should make clear whether it is taking a new position or simply following U.S. EPA mandates. (IPL)

Response: IDEM continues to believe that significant reductions of NO_x emissions are needed, as supported by the regional modeling performed by the Lake Michigan Air Directors Consortium (LADCO). Since the D.C. Circuit Court of Appeals has upheld the SIP call, IDEM also has a regulatory requirement to respond to the SIP call.

Comment: IDEM should include language that addresses how necessary local NO_x reductions can be achieved should it be found after implementation that a source complying with the rule by buying credits is causing a local ozone problem. (VCDH)

Response: U.S. EPA and IDEM believe that the stringency of this rule and the other emission requirements that sources must comply with will not lead to a single source causing a local ozone problem. It is extremely unlikely that even with the trading program any source in Indiana could increase its NO_x emissions from current levels. IDEM has conducted air quality modeling analyzing several possible control scenarios, assuming that sources will control where it is most cost-effective to do so and that sources will acquire allowances where that is most cost-effective. The modeling does not show that there will be adverse air quality impacts in any particular geographic area in Indiana.

Applicability

Comment: The exemption for units that accept a federally enforceable limit to restrict emissions below twenty-five (25) tons per ozone control period is supported. However, the current language in the draft rules is too restrictive and does not recognize equally effective mechanisms for limiting seasonal NO_x emissions. Sources that want to make use of the exemption should be allowed to use any means normally used in new source permitting to obtain synthetic minor permits, including restrictions on fuel consumption. The exemption could also include a restriction on actual tons of emissions where a source commits to using a continuous emissions monitoring system (CEMS), if the installation of the system would be cost effective. A failure to include at least a fuel consumption limitation option would be patently unfair to these sources. (AEP) (IEUAWG) (HE) (IMPA) (NS) (VC)

Comment: IDEM should expand the twenty-five (25) ton exemption to units that combust coal. The emissions from these units can be monitored using current fuel sampling and analysis with records of fuel use. In addition CEMS may also be used, but since the data would not be used under

the trading program, there is no reason to impose the stringent requirements under 40 CFR 75. (CTE)

Response: IDEM agrees the U.S. EPA model language is restrictive and more equally reliable ways to estimate potential to emit exist. IDEM has included language in the draft rule under 326 IAC 10-4-1(b)(3) that would permit other methodologies to be used. However, in discussions to date, U.S. EPA has not indicated a willingness to allow approval for any language other than its own. IDEM will continue to work with U.S. EPA on this issue.

Comment: We do not support an exemption for very clean units. Such an exemption would hinder the development of the allowance trading market. (IEUAWG) (HE) (VCDH) (VC)

Comment: IDEM should include an exemption for units with emission rates significantly below the targeted levels. Exempted units would have to accept an enforceable emission limit below the standard, for example seventy-five percent (75%) of the target level, and demonstrate compliance through stack testing. We would also propose that any allowances above the emission limit, twenty-five percent (25%), would be retired or used for other purposes. (BSC) (USS)

Response: IDEM understands the objection to this exemption, but could support an exemption if allowances are retired or provided for other beneficial uses. U.S. EPA has indicated, however, that it would not approve an exemption of this sort.

Comment: IDEM should clarify that units for which the source has accepted a federally enforceable permit limitation restricting heat input capacity are not subject to the rule. (PU)

Response: IDEM believes that permit limitations restricting capacity should be acknowledged and will provide clarification where needed.

Comment: Significant investments have been made to defer blast furnace gas (BFG) away from wasteful flaring operations. There appears to be some inconsistency by states with respect to the classification of BFG as a fossil fuel. IDEM should review this classification and develop a position consistent with U.S. EPA, other states, and its own permitting determinations. (LTV) (USS)

Response: IDEM has discussed this issue with U.S. EPA, which indicates that it has consistently included units fueled by blast furnace gas as controlled units in the SIP call. IDEM will continue to explore ways to address units that are inherently low emitting in the rule, but for now has included them in the large nonEGU trading budget.

Comment: IDEM has incorrectly classified the Perry K units as large nonEGUs even though U.S. EPA classified these units as small EGUs under the SIP call. A source that U.S. EPA decided was not to be included under the federal rule, and specifically one where controls would not be cost-effective, should not be singled out for regulation under this rule. (CTE)

Response: How the Perry K units should be classified has been a subject of ongoing discussion

throughout U.S. EPA's development of the NO_x SIP call. The former owner of Perry K, Indianapolis Power and Light, argued at various times, that the Perry K units were large nonEGUs and small EGUs. While IDEM initially felt that the Perry K units met U.S. EPA's classification as a small EGU, once U.S. EPA finalized the rule, the categories of affected sources in the inventory were clearly defined in the inventory, and U.S. EPA's inventory classification for the Perry K units does not match rule language concerning applicability. It is IDEM's interpretation that the Perry K units would be subject to the original model trading rule, 40 CFR 96. In that rule, a unit that had a heat input capacity greater than two hundred fifty million Btu/hour would be subject irrespective of whether it generated electricity (63 FR57461). When IDEM began this rulemaking, it considered the classification of Perry K and the definition of large affected unit. IDEM believes the Perry K units are large affected units because the Perry K units have a maximum design heat input greater than two hundred fifty million Btus per hour (250,000,000), were in operation prior to 1997, and did not serve a generator during 1995 or 1996 producing electricity for sale to the electric grid.

Comment: Sources should be allowed to retire a unit and receive allocations to shift loads to cleaner units. This could be the most cost-effective means of achieving compliance. IDEM should verify that the draft rules allow this and that retired units will receive a one-time allocation. These allocations should have a five (5) year lifetime to establish the load shifting baseline. (III)

Response: The draft rules include a retired unit exemption that would provide an allocation of allowances until the next allocation period. Since the unit would not have any heat input data after it is retired, the unit would get zero (0) allowances when IDEM reallocates for the next allocation period. The lifetime of the allowances is not limited.

Comment: We believe that there is a typographical error in the draft language at 326 IAC 10-4-1(a). As currently worded, the proposed rule language could inadvertently capture sources with more than one (1) unit, even if the unit is not a NO_x budget unit. We believe it is not IDEM's or EPA's intent to regulate non-NO_x budget units. Therefore, we recommend that IDEM modify the proposed rule language to more accurately reflect the type of sources intended to be regulated by the NO_x rule. (NS)

Response: IDEM agrees and will make the necessary changes.

Allowance Allocation Methodology

Comment: The allowance allocation methodology using the average of the highest heat input values for two (2) of the five (5) years preceding the allocation is supported as well as the use of information from 1995 to 2000 for the initial allocation. (AEP) (IEUAWG) (CIN) (IMPA) (PU) (PEI) (ALCOA) (SLE) (VC)

Comment: IDEM should stay with U.S. EPA's model trading rule and use the highest two (2) years of heat input between 1995 and 1997 in the allowance allocation methodology. Longer look back periods may be considered in future allocations. This approach provides equity for smaller electric utilities that have the least operational flexibility. (HE)

Comment: IDEM should revise the language to specify that allocations are determined using a five (5) year average rather than the average of the highest two (2) years of the five (5) years to provide more stability in the allowance allocations. (IPL)

Comment: New units that operated or were issued construction permit by September 30, 2000 should receive allowances for the first allocation period as "existing" budget units. (CIN)

Response: IDEM believes the proposed allocation methodology time periods provide the necessary flexibility to account for abnormal operations. IDEM understands that any particular choice it makes will either be favorable or unfavorable for a particular company. However, positions may well be reversed in the next allocation period. IDEM has reconsidered the time periods to be used for heat input data in light of the availability or nonavailability of heat input data. In order to make sure that information for a particular year will actually be available to IDEM for use in the allocations, IDEM has revised the initial heat input years to 1995 to 1999.

Comment: We are opposed to using output as the basis for allowance allocations. The creation of an output based allocation system has economic and energy policy consequences that IDEM has not evaluated and these consequences have an impact on regulatory decisions subject to the jurisdiction of other state and federal administrative agencies. IDEM should commit to working with the potentially affected sources to more fully evaluate the impacts of a transition to output-based system. If such a system is adopted in the future, non-fossil fuel fired units should not be considered for inclusion in the program. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (CTE) (ALCOA) (SLE) (VCDH) (VC)

Comment: IDEM should use an output-based allocation system once U.S. EPA has established a uniform approach for measuring output. Output-based allocations treat all EGUs equally, encourage efficiency and allow for more electricity to be generated without increasing emissions. The output-based methodology should be included beginning with the second allocation period. (MWIPS) (EPI) (NS)

Response: IDEM is not including an output-based allocation system or a rule commitment at this time because all of the implications of using such an approach have not been developed, but will continue to investigate this option. U.S. EPA is working on guidance that will assist IDEM in the development of an output-based approach. U.S. EPA has also committed to basing the second allocations under the Section 126 rule on output, but has not published any proposed language at this time.

Comment: IDEM should extend the allocation period to a minimum of five (5) years. A three (3) year allocation period introduces additional uncertainty into compliance planning decisions and increases the risk of basing future operating constraints on an unrealistically short baseline period. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (IMPA) (VC)

Comment: Allocations should be adjusted annually, rather than every three (3) years, to ensure that allocations are based on the most recent data from units and acknowledge rapid change in the industry. (MWIPS) (EPI)

Comment: The allocation period of three (3) years is supported as long as the rule is revised to allow new sources to opt into the existing source pool earlier than otherwise allowed by the current rule language. (NS)

Comment: Due to the complexity of this rule, allocations should be given on a one-time basis eliminating the need for reallocations every three years. A small set-aside could be held in the event a new source could not obtain NO_x allocations at a reasonable price. The minimum reallocation should be once every five (5) years, if not done on a one-time basis. (III)

Response: IDEM believes that a three (3) year allocation period is a good compromise between these many different proposals.

Comment: IDEM should allocate allowances to nonEGU units based on seventeen hundredths pound per million Btus (0.17 lb/mmBtu) and should not require additional reductions, especially for cleaner units. (BSC)

Comment: All nonEGU allowances should be fully allocated to nonEGU units and should not be transferred for other uses. The allocation methodology in the draft rule is supported. (USS) (ALCOA)

Response: As currently written, the rule uses seventeen hundredths pound per million Btu (0.17 lb/mmBtu), a baseline emission rate or the allowable permit limit, whichever is more stringent, for allocations. IDEM is proposing to have just one (1) set-aside that would be used for new sources, both EGU and nonEGU, and one (1) for energy efficiency and renewable projects, but there are sufficient allowances in the budget such that sources will not make reductions beyond what U.S. EPA contemplated in the SIP call.

Comment: IDEM should clarify whether the rule is intended to allocate allowances to EGUs based on fifteen hundredths pound per million Btu (0.15 lb/mmBtu) or the more stringent of this rate and the allowable emission rate. There seems to be a conflict between 326 IAC 10-4-9(d)(1) and 326 IAC 10-4-9(d)(5)(C)(i). (IKEC)

Comment: If an existing or new unit emits NO_x at a rate of less than the 0.15 lb/mmBtu for EGUs or 0.17 lb/mmBtu for nonEGUs, the allocation should be based on the actual or permitted emission rate whichever is less. (VCDH)

Response: IDEM has revised the rule language to clarify that the more stringent rate should be used. An EGU will have allocations based on 0.15 lb/mmBtu or the allowable emission rate, whichever is less. If a source has been limited to a stricter emission rate in its permit, it cannot emit greater than that amount. Allocations based on a higher rate would only provide an economic benefit and would be inconsistent with the permitting process.

Comment: IDEM should review IMPA's heat input rate and re-calculate the allowances because the allowances calculated are approximately fifty percent (50%) of the amount to which IMPA is entitled. (IMPA)

Response: IDEM has received the updated information and has recalculated allowances accordingly.

Comment: IDEM should further develop the allocation procedures to allow units that have operated between 1995 and 2000 to receive an allocation for the existing source pool as opposed to the new source set-aside. (PEI)

Comment: If a unit has a history of at least one (1) or two (2) years of normal operations, the owner or operator should be given an option to receive an allocation from the existing unit allowance pool. New units should be rolled into the existing program as soon as possible. No unit should be required to receive an allocation from the new source set-aside for more than one allocation period. (PEI) (MWIPS) (EPI) (NS) (VC)

Response: IDEM is reviewing the procedures for transitioning a unit from "new" to "existing". IDEM agrees that a unit that has at least one (1) season of operation should be included in the existing source pool as soon as possible. However, the timing of the reallocation schedule may result in a unit drawing from the new source set-aside for several years.

Comment: It is unclear whether the reallocations under 326 IAC 10-4-9(f) are given to all budget units or only the units that commence operation after May 1. (III)

Response: The original reallocation in subsection (f) would go to the existing units and not back to the new units. IDEM has revised this section to indicate that unused allowances would be returned to the new source set-aside for the next year's allocation.

Compliance Supplement Pool

Comment: In the NO_x SIP call, U.S. EPA proposed to allow states to award additional allowances where needed to avoid transmission system reliability problems. We are skeptical that system reliability problems will result and wish to be notified of any public hearings on this subject. If IDEM includes such provisions, sources should be required to submit the utility's original schedules for

control device installation, copies of dated requests for bids for control device installation, documentation between utility and control device contractors and labor providers pertaining to schedules of control device installation, and documentation of efforts by the utility to purchase allowances. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: IDEM has included language from the SIP call that would allow a source to petition IDEM for allowances based on a demonstration of need. The draft rule language requires that IDEM ensure the opportunity for a public hearing on the distribution of compliance supplement pool allowances for a demonstration of need.

Comment: There is a concern with the partitioning of the compliance supplement pool between electricity generating units (EGUs) and non-EGUs. The setting aside of a disproportionately large specific pool of allowances for non-EGUs could lead to unintended consequences relating to electricity reliability. If IDEM is going to partition the compliance supplement pool, then the share of the pool for non-EGUs should be no greater than this source category's share of the overall budget, which is approximately two percent (2%). (AEP) (HE) (IEUAWG) (IPL) (VC)

Comment: The reservation of ten percent (10%) of the pool for nonEGU units is supported. This proposal provides an incentive for nonEGU units to achieve early reductions in advance of the May 31, 2004 compliance date. The language should also allow for a "needs demonstration" in lieu of early reductions. (CTE) (ALCOA)

Response: IDEM understands that there are some nonEGUs that will not be installing controls and will not need the allowances. IDEM has revised the language to combine the pool for use by EGUs and nonEGUs. In order to address the issue of oversubscription by a few sources, IDEM has included a process whereby sources that have made early reductions would have their requests combined with all others and the pool would be distributed pro rata. IDEM has divided the pool in two. Up to fifty percent (50%) would be distributed in early 2003 for early reductions in 2002 and the remaining would be distributed in early 2004 for 2003 reductions. This process should help a source that requests allowances based on "need", because at least fifty percent (50%) of the pool will be available in 2004 if the source cannot generate early reduction credits in 2003.

Comment: IDEM should preliminarily allocate emission reduction credits (ERCs) as soon as possible. The ERCs should be allocated based on the unit contribution to the total heat input in Indiana. Using heat input to allocate ERCs is appropriate because it will correspond to IDEM's overall methodology for allowance allocations and will give companies the opportunity to earn ERCs roughly commensurate with the proportionate level of emissions reductions they are required to make. If a company did not generate sufficient ERCs to utilize its preliminary allocation, the remaining unearned ERCs would revert to the general state compliance supplement pool, to be reallocated on a pro rata basis to other companies that have generated more ERCs than their preliminary allocation. (AEP)

(IEUAWG) (VC)

Response: IDEM will review this new proposal, although revisions to the draft rule are somewhat consistent with the suggestions except for timing. IDEM is proposing to collect all early reduction credit requests and distribute the allowances on a pro rata basis early in 2003 and 2004. Up to fifty percent (50%) of the pool would be available for 2002 reductions and the remainder for 2003 reductions or based on “need”.

Comment: IDEM should not set-aside any allowances for the demonstration of need as we believe that those allowances will never be claimed because it will be impossible to make the showing required to obtain the allowances. (AEP) (IEUAWG) (HE) (IPL) (VC)

Response: IDEM will review these provisions, but is hesitant to not have some allowances available. While the claim may be true for EGUs, this provision is also available to nonEGUs. IDEM will continue to discuss this issue and possible solutions with interested parties.

Comment: IDEM should revise 326 IAC 10-4-15 to require notice of award of early reduction credits for a given year to be made not more than ninety (90) days after the annual filing deadline for the application for such allowances. The only exception to this requirement would be in the event that the early reduction pool was oversubscribed with any unclaimed allowances redistributed to sources that earned the rights to more allowances than they were preliminarily allocated. The allocation should be made prior to 2004, as currently written, to address the significant negative impact on compliance planning and implementation under the rule. IDEM should revise the language to require distribution of the allowances within one hundred fifty (150) days after each ozone control period in 2001 through 2003. (AEP) (CIN)

Response: The procedures for awarding the allowances is an important issue and IDEM will continue to discuss this issue with affected parties. IDEM has revised the rule to require early reduction credit requests to be filed by December 31 of the year in which the reductions took place and IDEM would distribute the credits by March 31 of the following year. Due to the fact that most, if not all, sources will not have controls in place until 2002, IDEM has limited the early reduction requests to the ozone control periods in 2002 and 2003.

Comment: 326 IAC 10-4-15(b) should be revised to allow the use of common stack monitoring to obtain allowances from the compliance supplement pool in accordance with 40 CFR 75. Requiring duct monitoring is excessive and unnecessarily burdensome to sources to obtain compliance supplement pool allowances. Any monitoring system approved under 40 CFR 75 should be acceptable for this purpose. (AEP)

Response: IDEM agrees that an approved monitoring system under the Acid Rain program should be allowed under this rule. It appears that 40 CFR 75.72 would allow for common stack

monitoring and this part of the 40 CFR 75, Subpart H monitoring required under 326 IAC 10-4-15.

Comment: The compliance supplement pool allowances should not be subject to flow control provisions due to their limited life. The allowances should expire at the end of the 2005 ozone season. IDEM should address this by striking 326 IAC 10-4-15(b)(1)(J). (AEP) (VC)

Response: IDEM understands the concerns with the CSP allowances and will discuss this issue with U.S. EPA. To date, U.S. EPA has indicated that flow control will not apply in 2004, but will apply in 2005.

Comment: The use of the most stringent permitted limit as the starting point for the calculation of early reduction credits is supported, but IDEM should clarify what constitutes the most stringent limit for units involved in an Acid Rain program averaging plan. We recommend that this limit be based on the actual limit, not the limit used in demonstrating the acceptability of the averaging plan. IDEM's proposed approach for use of the compliance supplement pool in the first two (2) years and the ability to generate early reduction credits between 2001 and 2003 is also supported. (AEP) (IEUAWG) (VC)

Comment: While IDEM's proposed approach of allocating allowances from the CSP is supported, the following criteria and procedures should be included in the draft rule.

- C Installation of new NO_x controls must be required as part of an application for early reduction credits.
- C The difference between the previous actual NO_x emission rate and the new (controlled) emission rate should be used to calculate the quantity of early reduction credits. This is preferred over the "most stringent current limit" to ensure real reductions are achieved.
- C Credits should be allocated on a pro rata basis as soon as practical after the end of the 2003 ozone control period. All credit applications should be treated equally and if the pool is oversubscribed, all credits should be discounted an equal amount so the pool is not exceeded.
- C Applications for early reduction credits, based on projected reductions, may be submitted in advance of the actual reductions, by a date certain and all complete applications submitted by the date would be considered equally. Following the 2003 ozone control period, all operational data would be "trued up" and allocations adjusted accordingly. (HE)

Response: IDEM agrees that the allocation of allowances should be for true reductions and will revise the rule language accordingly.

Comment: IDEM should address electricity reliability concerns by doubling the size of the compliance supplement pool, but limiting its use to early reduction credits. This would provide an additional incentive for early reductions with accompanying air quality benefits and promote the development of a viable trading program. (IEUAWG) (IMA) (CIN) (ICC) (VC)

Comment: IDEM should look for creative ways to increase the size of the compliance supplement pool within boundaries established by U.S. EPA. Preliminary information provided by IDEM indicates non-EGU sources may not need their full allocation under the proposed allocation methodology. (HE) (IMPA)

Response: Information from U.S. EPA has indicated that an increase of the CSP would not be approved and IDEM is working with U.S. EPA on the inventory and associated budgets to identify any flexibility.

Comment: IDEM should delete the language under 326 IAC 10-4-15(b)(1)(D) concerning compliance with any state or federal emissions requirements. This enforcement provision is too vague and is not related to NO_x reductions and should be deleted. (IKEC)

Response: IDEM believes that ongoing compliance is a valid criteria for determining whether it is appropriate to approve a request for allowances, but agrees that the language should be narrower. IDEM has revised the language to specify that the unit must be in compliance with any NO_x emission requirements.

Comment: The draft rule requires that 40 CFR 75, Subpart H monitoring start in 2000 to generate early reduction credits from the compliance supplement pool. This is unfair for large affected units that are not part of the Acid Rain program. IDEM should develop alternatives to units that currently do not comply with Subpart H monitoring. (III)

Response: U.S. EPA is clear that the monitoring needed to verify early reduction credits should be consistent with the SIP call. IDEM does agree that the rule language should be revised to account for sources that will not begin to generate credits until 2002 or 2003. The 2000 date was meant to address units that would generate credits in 2001 and the need to have one (1) year of monitoring data available.

Energy Efficiency and Renewable Set Aside

Comment: IDEM should include a twenty percent (20%) set-aside in the trading program for energy efficiency and renewable energy projects. This would provide an incentive to bring clean energy projects to Indiana and reduce air pollution, including toxic pollutants. Energy efficiency and renewable energy investments can also increase compliance flexibility and improve local economies through higher productivity and the creation of jobs. The set-aside should not be distributed to nuclear power plants or garbage incinerators. (BH) (CR) (JU) (ML) (RV) (ARL) (MS) (MKP) (PJR) (LS) (LH) (NL) (EMW) (JDH) (JL) (GK) (GG) (SJG) (BDB) (BJL) (JR) (AH) (DLB) (SM) (KG) (CF) (JK) (AP) (MLS) (KT) (JE) (CS) (LJ) (MG) (LAH) (KP) (JK) (DM) (KPH) (HC) (BM) (JST) (DR) (SB) (TS) (DL) (BR) (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI)

Comment: The inclusion of a set-aside for energy efficiency or renewable energy set-aside is not supported for the following reasons.

- C Setting aside additional allowances increases the stringency of an already aggressive program.
 - C Energy efficiency and renewable energy sources have no emission reductions of their own.
 - C Reducing the number of allowances directly allocated to existing sources merely reduces the flexibility source owners have to design the most cost-effective response to their obligations.
- Should IDEM pursue a energy efficiency and renewable energy set-aside, the allowances should be created specifically for the set-aside from the new source set-aside. However, IDEM has not advanced any proven methodology that fairly allocates allowances for energy efficiency or renewable energy projects. Because of this, such a rule is premature at this time. In addition, the Energy Policy Division of the Indiana Department of Commerce is currently planning to initiate a program to encourage energy efficiency and distributed generation through the use of grants and low-interest loans. This program is the type that should be used to provide encouragement and incentives for energy efficiency and renewable energy projects and IDEM should defer these issues to the other state agencies charged with this task. (AEP) (HE) (IKEC) (CIN) (IMPA) (USS) (CTE) (ALCOA) (IPL) (VC)

Comment: IDEM should not include an energy efficiency and renewable energy set-aside for the following reasons:

- C The proposal will have no air quality benefits since the total number of allowances remains the same.
- C The set-aside will increase uncertainty and raise electricity generator compliance costs.
- C The approach advocated by U.S. EPA would seek to continue mandatory utility-funded demand side management programs and impose an unfair, indirect tax on customers.
- C The treatment of “free riders” ensures windfalls to projects that will be implemented anyway because of cost-effectiveness, but it is not a cost-effective means to provide incentives to new projects designed to further U.S. EPA’s air quality goals.
- C Many customers may see bill increase because of the set-aside.
- C Requiring existing and future generators to subsidize current and future competitors is unfair.
- C The proposal is too vague about the allocation of the allowances to be adopted.
- C U.S. EPA has overstated the level of participation that can be reasonably assumed.
- C Record keeping obligations will deter participation
- C U.S. EPA’s guidance projects outrageously ambitious growth of non-hydro renewable supply resources. (IEUAWG) (SLE)

Comment: An energy efficiency and renewable energy set-aside is supported, but the allowances for this set-aside should not be taken from the EGU budget. Many of the projects are not directly related to generation of electricity for sale. One way to address this is to provide allowances from the budget for area and mobile sources. (VCDH)

Response: An energy efficiency and renewable energy set-aside is a key policy issue on which discussion will continue. IDEM agrees that such a set-aside would be beneficial. Other states have adopted or have proposed to adopt this type of set-aside using different amounts. New York set-aside three percent (3%) of the trading program budget and Massachusetts set-aside five (5%) of the budget. IDEM is proposing to set-aside two percent (2%) of the trading budget, one thousand one hundred forty-one (1,141) tons, for energy efficiency and renewable energy projects. However, the allowances would be derived from the nonEGU budget. A change in status of some nonEGU units since U.S. EPA set the Indiana budget has provided IDEM with additional flexibility to establish this set-aside without creating any additional burden on NO_x emitting sources. IDEM will continue to evaluate the impact of this set-aside on existing nonEGUs. Based on the types of projects likely to apply for this set-aside, and the relatively small amount of NO_x avoided by each one, a two percent (2%) set-aside will be ample. Information from the Energy Office, Department of Commerce indicates that this would be more than sufficient for energy efficiency and renewable energy projects expected in Indiana. IDEM does not agree that it makes sense to set-aside twenty percent (20%) of the trading budget for these projects, as many comments have suggested, because it is significantly more than would be used and would require substantially larger controls at EGUs and nonEGUs, with increased costs to those units and to electricity consumers. IDEM also has proposed that, for each year, any unclaimed allowances in the set-aside would be added to the new source set-aside for that year. IDEM has also included a provision that the allowances for energy efficiency or renewable energy projects may be requested annually for a maximum of five (5) years to try and assure that new sources will receive at least some allowances needed for operation.

New Source Set Aside

Comment: IDEM should include a new source set-aside to be used for new, cleaner power plant construction to create construction jobs and replace older, more polluting power plants. The set-aside should be set at five percent (5%) during 2003-2005 and two percent (2%) thereafter. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI) (CIN) (PU) (SLE)

Comment: The new source set-aside should be no more than three percent (3%) to avoid exacerbating the strain on electricity reliability in Indiana. In addition, the following should be included:

- C the set-aside should be distributed on a first-come, first-served basis,
- C new sources should be required to return any unused allowances,
- C returned allowances should be allocated to other new sources that did not receive sufficient allowances prior to returning the allowances to any existing sources, and
- C if the allocation period is longer than two (2) years, then after two (2) years of operation new sources should receive a fixed allocation for the remainder of the allocation period. (IEUAWG)

(HE) (VC)

Comment: The new source set-aside should be established at three percent (3%) for 2004 through 2006 and two percent (2%) thereafter. (IPL)

Comment: IDEM should increase the size of the set-aside to ten percent (10%) for the first three (3) years of the program and four percent (4%) thereafter. An adequate new source set-aside will encourage newer cleaner plants that will ultimately replace older existing sources. (PCEGC)

Comment: IDEM should confirm that the new source set-aside system operates in two (2) pools, one for EGUs and one for nonEGUs, and not one (1) pool. IDEM should also confirm that under subscription of the pool would result in allowances being distributed to the existing EGU pool and not to the entire NO_x budget pool. (IKEC)

Comment: No new source set-aside should be established for nonEGUs. The nonEGU budget should be fully allocated to the existing sources affected by the rule and made available to new sources via the trading market. (USS)

Comment: The new source set-aside for nonEGUs should only be one percent (1%). IDEM has already provided information indicating that this would be an ample amount for current new sources and would allow the owners and operators of existing units to retain more of their allocations. (CTE) (ALCOA)

Comment: Set-asides of five percent (5%) and two percent (2%) are too much for nonEGUs and do not reflect past trends for growth for nonEGUs. (III)

Comment: Any set-aside for EGUs must come from the EGU budget and there should be no transfer from the nonEGU budget. (ALCOA)

Comment: A sufficient new source set-aside should be established to allow fair access to the marketplace. The set-aside percentages currently in the draft rule should be applied against the entire budget, to be allocated to new EGUs and new nonEGUs alike. (MWIPS) (EPI)

Comment: All allocations should use 0.15 lb/mmBtu or 0.17 lb/mmBtu regardless of permit limits. Such a system promotes fairness, is easy to administer, discourages permittees from seeking relaxed permit limits, and provides incentives to reduce NO_x emissions beyond regulatory requirements. (MWIPS) (EPI)

Comment: IDEM should clarify how set-aside allowances will be allocated.

C Will the set-asides be granted on a first-come, first-served basis or an equal basis for all applications submitted?

C What is the earliest that allocations can be applied for?

C What happens if a unit granted allocations is not constructed or does not use all of the allocations (reallocation is available, but comes after the fact eliminating planning)? (III)

Comment: New source set-aside allowances should be distributed on a first-come, first-served basis, based on the date the unit is issued an approved construction permit. Any unused allowances should be allocated to new units that did not receive allowances initially before reallocating the

allowances back to existing units. (SLE)

Response: IDEM is proposing to have just one (1) new unit set-aside that will originally be established using five percent (5%) of the EGU budget for the 2004 through 2006 time frame and one percent (1%) of the nonEGU budget. For following years the nonEGU percentage would stay the same, but the set-aside would be reduced to reflect using two percent (2%) of the EGU budget. New sources will have to reapply annually, by December 1 of the year prior to the ozone season in which it intends to operate until the source is able to use allowances from the existing source pool and IDEM will consider all applications received by the deadline equally. Allowances will be allocated using 0.15 lb/mmBtu (EGUs) or 0.17 lb/mmBtu (nonEGUs) or the permitted limit, whichever is more stringent. For new EGUs, a construction permit must be issued and any appropriate notifications have been received by the Indiana Utility Regulatory Commission before a request can be made. If the set-aside is oversubscribed, then allowances will be distributed pro rata. If there are unused allowances and the energy efficiency and renewable energy set-aside was oversubscribed, additional allowances will be distributed to those projects pro rata and any allowances left will be returned to the following year's set-aside. Any allowances not used by new sources after the ozone season are returned to the set-aside for the next year's allocations. Allowances will not be available for trading or selling until the unit is part of the existing source allocation pool and is able to bank unused allowances.

Opt-in Program

Comment: The inclusion of opt-in provisions in the draft rule is supported. An opt-in program will increase the coverage of the trading program and help stimulate the emergence of a viable market. (IEUAWG) (HE) (CIN) (SLE) (VCDH) (VC)

Response: IDEM appreciates the support.

Alternative Compliance Options

Comment: If IDEM does not shift the compliance date to 2005, then it should include innovative compliance provisions similar to those being developed by Ohio. The innovative plan in Ohio would shift the compliance date forward to May 1, 2004 and add twenty percent (20%) of the baseline emission allocation for each source to their 2004 allocation. These provisions provide an affected source with a choice of either operating controls during May 2004 and bank the excess allowances or not operate controls and have the additional allowances deducted for compliance. If the source decides to control emissions, then the allowances could be banked for future unrestricted use or sale. This is a proactive way to encourage the operation of emission controls earlier than needed and further aid in reducing risk of inadvertent non-compliance should a source not be able to obtain the

necessary controls in a timely fashion. (AEP) (IEUAWG) (IKEC) (IMA) (CIN) (IMPA) (ICC) (VC)

Response: U.S. EPA has indicated that it would not approve such provisions, which would have the effect of increasing the NO_x budget in future years. IDEM will continue to consider this option and accept comments concerning the inclusion or exclusion of this option.

Comment: IDEM should consider an alternative compliance option promoting technological innovation and multi-pollutant controls. IDEM should include provisions in the draft rules that provide for an alternative compliance plans that permits sources, on a unit specific basis, to apply for a compliance date extension up to May 1, 2008. Any unit that has received such approval would have to meet established emission reduction targets no later than May 1, 2008. IDEM should add an additional section to address the alternative compliance option. As a further incentive, IDEM should enlarge the compliance supplement pool by twenty percent (20%) or create a innovative technology pool of identical size. These credits would be available for the ozone control periods in 2004 through 2007 for any unit operating under an approved alternative compliance plan. The addition of the additional allowances will not materially affect U.S. EPA's ability to evaluate the impact of the emission reductions in 2007, especially when U.S. EPA knows that those tons will be removed by 2008. (AEP) (IEUAWG) (IKEC) (IMA) (ICC) (NS) (VC)

Comment: While the alternative compliance plan is supported, IDEM should make sure it accommodate the ability of a company to include installation of new, efficient, cleaner generation. NO_x reductions should not be limited to the installation of add on control devices. This could be accomplished by allowing affected sources the option to commit to the installation of new, clean, efficient generation in exchange for sufficient time to plan, permit and install the equipment, even if it requires additional time beyond May 31, 2004. (NS)

Comment: There are several hurdles that would have to be overcome if IDEM pursues a multi-pollutant compliance option in the rule. Following are comments concerning this compliance option:

- C The absence of regulatory incentives will not deter the development of innovative technology, multi-pollutant control, or otherwise. Other venues, aside from regulatory incentives are available.
- C There are other regulatory drivers that will promote control of other air pollutants besides NO_x, such as the potential U.S. EPA regulatory determination regarding utility mercury controls, PM₁₀ air quality standards, regional haze regulations and new source review enforcement initiatives.
- C This alternative is not feasible for units that already have flue gas desulfurization technology deployed. Not all utilities can benefit from such an alternative.
- C Multi-pollutant control technology may make sense in the future, but including the option in this rule would not provide any additional inducement.

C If IDEM would consider incorporating the option into the rule, there should be no provision for additional allowances. This would be a red flag for U.S. EPA and the compliance extension is enough incentive. (HE)

Comment: Alternative compliance plans for multi-pollutant reductions are supported, but the compliance date should not be extended past May 1, 2007 and no additional allowances provided.. IDEM should find ways to accommodate these plans and account for them through the compliance supplement pool. (VCDH)

Response: IDEM is not including an alternative multi-pollutant compliance plan at this time. West Virginia included such a provision and U.S. EPA has not shown any sign that it will approve the rule. In a letter, dated November 28, 2000, U.S. EPA-Region 3 indicated specific concerns with the alternative compliance plan and the ability of West Virginia to meet its 2007 budget. As with other alternative compliance options, IDEM will continue to consider and accept comments concerning multi-pollutant compliance plans.

Miscellaneous

Comment: 326 IAC 10-4-5(c), Computation of Time, should be revised to avoid the unintended effect of lengthening the control period should September 30 fall on a weekend. (AEP) (IEUAWG) (HE) (NS) (VC)

Response: IDEM agrees and will make suggested changes.

Comment: 326 IAC 10-4-1(b)(3)(D), 326 IAC 10-4-4(e) and 326 IAC 10-4-3(e)(7) should be revised to allow for the centralized maintenance of records required by the rule. IDEM has acknowledged the need for centralized record maintenance in the past. (AEP) (IEUAWG) (HE) (IPL) (NS) (VC)

Response: IDEM has discussed this issue with U.S. EPA. IDEM understands the concern about keeping records at facilities that are generally unattended. U.S. EPA's concern is that companies with facilities in several states may store all records in a central location, possibly hundreds of miles from the facility. IDEM will continue to discuss this issue to see if both concerns can be addressed, and welcomes specific suggestions.

Comment: 326 IAC 10-4-1(b)(3)(E) should be revised to change the November 1 date to synchronize this reporting with other reporting deadlines for the third calendar quarter. (AEP)

Response: A specific date was not suggested and it is unclear whether the requested change should be before or after November 1. If reporting deadlines are before November 1, then it would seem that a change is not needed because the rule only requires reporting "by November 1".

Comment: 326 IAC 10-4-10(a)(1), 326 IAC 10-4-10(g) and 326 IAC 10-4-10(h) appear to include incorrect cross-references to section 13(j). These references should be section 13(i). (PU) (IPL)

Response: IDEM will make the changes.

Comment: The NO_x reduction rule, #98-235 APCB, should be formally removed from consideration. (III)

Response: IDEM will formally withdraw #98-235 after this rulemaking has been completed and an effective rule is in place. The SIP call is still in litigation and the Supreme Court has not issued a decision as to whether it will hear the case.

Comment: Please describe how a source will move allocations between a compliance account and an overdraft account. (III)

Response: As indicated in 326 IAC 10-4-11, an authorized account representative would submit the transfer to U.S. EPA and identify the accounts and allowances involved in the transfer. Within five (5) days of receipt of the transfer, U.S. EPA will record the transfer and within five (5) days of recordation, U.S. EPA will notify the account representatives.

Comment: On January 26, 1996, U.S. EPA issued a final rule granting a NO_x waiver for northwest Indiana. IDEM should recognize the NO_x waiver by removing NO_x from the applicability provisions of 326 IAC 2-3-2 as part of the comprehensive rule changes for the NO_x SIP call. (IPC)

Comment: The Indiana Offset rules should be modified to eliminate NO_x offset ratios of greater than one to one (1:1). The NO_x reductions demonstrate attainment and further reductions are not needed and penalize growth. (III)

Comment: IDEM recently revised the permitting rules under 326 IAC 2-2 to exclude pollution control projects from rule applicability. This change makes the rule consistent with federal regulations and U.S. EPA guidance. As part of the comprehensive rule changes for the NO_x SIP call, IDEM should also revise the language under 326 IAC 2-3-1 to include the pollution control project exemption. (IPC)

Response: IDEM believes that these suggestions are outside the scope of this rulemaking.

Comment: The references to (C)(1) and (C)(2) under 326 IAC 10-4-9(d)(5)(D)(i) should be (C)(i) and (C)(ii) respectively. (IPL)

Response: IDEM has revised this section and the references are no longer present.

Comment: The proposed trading system is unreliable in its current form and needs a “safe harbor” to prevent unfair and arbitrary consequences. Although the trading program is meant to

provide for cost-effective reductions, the trading program is not in place at this time. This means that a source must either implement reductions up-front at its own facilities regardless of cost or gamble that allowances will be available for purchase later. This could be prevented with a safe harbor provision that would insulate a source if no allowances are available or if the price exceeds some threshold amount. Suggested language has been submitted previously. (IPL)

Response: IDEM has included the regional trading program in the rule to meet the budget requirements of the NO_x SIP call. The safe harbor provisions that have been suggested state that a source would enter into an enforceable commitment to purchase allowances if reductions could not be made. However, the commentor goes on to state that “if no allowances are available, or if the price of the allowances exceed some threshold amount,” the source would be insulated from being in violation. IDEM does not see how U.S. EPA would approve these provisions, and IDEM has received no indication from U.S. EPA that they would consider the provisions, because it would allow for an exceedance of the budget. Although a NO_x SIP call trading program is not in place, the Ozone Transport Region (OTR) has a trading program in place and there may be a Section 126 program in place prior to 2004.

Penalty Provisions

Comment: Based on the likelihood that the only sources that will exceed the allocations will be the sources that cannot purchase allocations on the open market towards the end of the ozone season, the three (3) times penalty is excessive. In addition, this provision is a non-monetary penalty that IDEM has no authority to impose. Sources should be required to obtain allocations for excess emissions at a one to one (1:1) ratio and penalties should be dealt with in subsection (k)(7). (III)

Response: The penalty in 326 IAC 10-4-10(k)(5) is taken directly from the requirements of 40 CFR 96.54(d)(1). Under these sections, the penalty is imposed by U.S. EPA, not IDEM. Additionally, the penalty portions are located so as to correspond to the location of the equivalent sections of the federal rule.

Comment: It is unclear why violations are issued for a unit's exceedance of allocations and excess emissions are based on a unit's emissions, when the account representative controls allocations for a source. This rule should be written such that a source shall not exceed, in totality, the sum of allocations from all units. (III)

Response: U.S. EPA set up the trading program to allocate allowances to individual units and this is consistent with the way U.S. EPA set up the Acid Rain program. Each unit will be monitored and it is this data that will be used to determine compliance. In effect, it is the sum for the source, in that, a unit that may have excess emissions can be brought back into compliance by transferring allocations from other units or through the purchase of allowances.

Comment: The purposed rule under 326 IAC 10-4-4(c)(2) and 326 IAC 10-4-10(k)(7) indicate that each ton of excess emissions is a separate violation. This goes beyond what is required under Indiana statutes and IDEM lacks the authority to make this change. (IPL)

Comment: The penalty “guideline” in 326 IAC 10-4-10(k)(7) is arbitrary and unlawful in assuming that any excess emissions constitute a violation across each of one hundred fifty-three (153) separate days. The days of violation would be properly determined by identifying the days on which emissions occurred after the necessary emission allowances had been exhausted. (IPL)

Response: Because the NO_x rule is based on a trading program that strictly caps emissions, both regionally and on a source-specific basis, it is appropriate that every ton of emissions over a source’s available allowances should be considered a separate violation. Otherwise, the penalty would not be sufficient to remove the economic benefit of noncompliance and would not deter excess emissions. Furthermore, it makes sense that a source that emits fifty (50) excessive tons should pay a higher penalty than a source that emits one (1) excessive ton. Making each ton a separate violation ensures that the penalty will include the economic benefit of noncompliance and will be proportionate to the severity of the violation.

Additionally, the rule provides that each day of the ozone season constitutes a violation because the rule caps emissions on an ozone season basis and does not assign the emissions of discrete tons to a particular day. If the source exceeds its allowances for the ozone season, then each day of that season is a separate violation. However, the rule does provide flexibility by allowing the owners and operators of the unit to demonstrate that a lesser number of days should be considered.

The state rule defines what is a violation in the same manner as the federal law at 40 CFR 96.6(c)(2) and 96.54(d)(3). Authority to incorporate these provisions into state rules can be found in IC 13-17-3-4, which provides that the air pollution control board (board) shall adopt rules that are necessary to implement the Clean Air Act (CAA), and in IC 13-17-3-11, which provides that the board has the authority to adopt rules under discretionary authority granted to the state under the CAA and its regulations. Finally, IC 13-30-4-1 provides explicitly that a person who violates any provision of a rule adopted by the board is liable for a penalty per day per violation.

Comment: Another arbitrary penalty appears at 326 IAC 10-4-12(i) concerning failure of monitoring equipment to receive formal certification. The rule language states that upon disapproval of a certification, all previous data will be discarded and maximum potential emissions will be assumed for the period. This is arbitrary when reliable information is available. (IPL)

Response: The penalty concerning certification is taken directly from the requirements of 40 CFR 96.71(b)(3)(v). U.S. EPA intended to have a strong incentive for monitoring in accordance with the rule.

Monitoring

Comment: The language under 326 IAC 10-4-12(b)(1) makes reference to 40 CFR 75.76. In reviewing 40 CFR 75 we are unable to locate 40 CFR 75.76. (AEP)

Response: U.S. EPA has indicated that the correct references should be 40 CFR 75.71 and 40 CFR 75.72.

Comment: It appears that 326 IAC 10-4-12(c) prohibits units connected to common stacks from using monitoring methods that have been used for a number of years to comply with Acid Rain program requirements. IDEM should revise this subsection to allow common stack monitoring in accordance with 40 CFR 75. (AEP) (RPL)

Response: Subsection (c) is primarily timing requirements and refers the reader back to subsection (b) for specific required actions. By revising the rule language based on the previous comment, it appears to address the concern because 40 CFR 75.72 discusses monitoring via a common stack. IDEM will discuss this with U.S. EPA to verify that monitoring methods under the Acid Rain program are allowed under the trading program.

Comment: 326 IAC 10-4-12(q)(2) should be reviewed to correct any inaccurate references, specifically the reference to section 10(n). (AEP)

Response: IDEM will review the language and correct any inaccurate references.

Comment: The draft rule requires monitoring in accordance with 40 CFR 75, Subpart H. These provisions generally require the use of continuous emissions monitoring systems (CEMS). In some cases, units are allowed to monitor using flow monitoring and emission factors determined through testing under Appendices D and E. However, these provisions generally address utility boilers and not industrial boilers. IDEM should either not specify 40 CFR 75 monitoring requirements for industrial boilers and remove the CEMS requirement or specify alternative methodologies. One alternative could be the continuous measurement of fuel usage and use of accurate emission factors, based on annual stack testing similar to the cement kiln provisions in 326 IAC 10-3. IDEM should also confirm that the alternative methodologies available under 40 CFR 75 will continue to be available under this rule. (BSC) (IMPA) (USS) (III) (LTV)

Response: As part of the trading program, U.S. EPA has required monitoring consistent with 40 CFR 75, Subpart H. IDEM has discussed the alternative methodologies under 40 CFR 75 and their availability to industrial boilers with U.S. EPA. U.S. EPA has stated that the alternatives would be available as long as existing criteria, including emissions thresholds are met. IDEM will continue to discuss the alternative methodology issue with U.S. EPA. It should be noted that the cement kilns are not included in the trading program and if a kiln opts-in, the kiln will have to monitor according to the trading program and not 326 IAC 10-3.

Comment: IDEM has included a certification deadline of May 1, 2001 for units that anticipate requesting early reduction credits. Because this rule will not be effective by that date, we do not believe this certification deadline is appropriate. This deadline is unachievable and unfair to sources that are not part of the Acid Rain program, but wish to participate in the early reduction credit program. A more appropriate date would be nine (9) months after the rule is effective to address the complex nature of the monitoring requirements under this rule. (CTE) (III)

Response: IDEM has revised the rule to reflect the need to have a certification prior to the ozone season for which a source is seeking early reduction credits.

Comment: 326 IAC 10-4-12(f)(3) should be revised to include “or breakdowns totaling less than five percent (5%) of the total operating time and repairs.” (III)

Response: The monitoring provisions under this rule and 40 CFR 75 are very stringent concerning data availability and IDEM will have to discuss this issue with U.S. EPA.

Comment: Quarterly reports are unnecessary considering the rule is based on ozone season compliance. (III)

Response: Although IDEM agrees that compliance is based on the entire ozone season, IDEM has discussed this issue with U.S. EPA to see what the need or rationale is for quarterly reporting. According to U.S. EPA, the quarterly reporting is needed to assist in identifying problems that could invalidate monitoring data. By having quarterly reporting, U.S. EPA can identify problems early and reduce the amount of time that a source would have invalid data.

NO_x Allowance Banking

Comment: The inclusion of flow controls if banked allowances exceed ten percent (10%) creates a “use it or lose it” incentive. In addition, a source may have to store credits for several years to bring a new or existing unit online. This storage could potentially bring the banked allowances over ten percent (10%) and penalize the project. (III)

Comment: Set-asides should not be included in the ten percent (10%) flow control trigger. (III)

Comment: U.S. EPA should calculate the available banked allowances at a minimum one (1) year in advance and preferably three (3) years in advance to allow for planning. If this is not possible, the proposed language is preferable. (III)

Response: U.S. EPA has not allowed any flexibility with the flow control provisions and it is unlikely that an individual state could dictate how the flow control provisions should function. A new source would have the ability to draw from the new source set-aside and should not be affected by the flow control provisions.

Permit Requirements

Comment: IDEM should clarify that all pollution control projects and associated modifications that are necessary to comply with this rule are exempt from new source permitting and performance standard requirements and are to be considered no more than minor source modifications, if modifications at all, under the Title V program. (IEUAWG) (HE) (CIN) (SLE) (NS) (VC)

Response: IDEM anticipates that many, if not all, of the modifications will fall under pollution control project exemptions, but IDEM cannot anticipate the nature of every source-specific modification that will be required for each source to comply with the rule. The state rules do not add any permitting requirements that are not federally required. IDEM will follow US EPA policy regarding pollution control exemptions from federal rules as reflected in the WEPCO decision and other federal policies and rules. Title 326 of the Indiana Administrative Code currently contains language regarding permitting control devices. For a source with a Federally Enforceable State Operating Permit (FESOP), the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as exempt, 326 IAC 2-8-10(a)(11) defines when installation of pollution control equipment qualifies as an administrative permit amendment, 326 IAC 2-8-11.1(d)(3) defines when installation of pollution control equipment qualifies as a minor permit revision, and 326 IAC 2-8-11.1(f)(1)(I) defines when installation of pollution control equipment qualifies as a significant permit revision. 326 IAC 2-8-10 and 2-8-11.1 should be reviewed to determine what level of permitting is required for associated modifications at a source.

For a source with a Title V Operating Permit, the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as an exempt modification, 326 IAC 2-7-10.5(d)(3) defines when installation of pollution control equipment qualifies as a minor source modification, and 326 IAC 2-2-1(o)(2)(H) and 2-7-10.5(f)(8) define when installation of pollution control equipment qualifies as a significant source modification. 326 IAC 2-7-10.5, 2-7-11, and 2-7-12 should be reviewed to determine what level of source modification and permit modification is required for the associated modifications at a source.

Comment: IDEM should review the cross references under 326 IAC 10-4-7(c) and correct them accordingly. (AEP) (IEUAWG) (HE) (IPL) (VC)

Response: IDEM will correct any inaccurate cross references.

Comment: The requirement to submit a permit application at least eighteen (18) months prior to the commencement of operation of a new unit is too long to allow for flexibility. Boilers can often times be installed very quickly and IDEM should not require more than two hundred seventy (270) days. (III) (NS)

Response: In accordance with 326 IAC 2-1.1-8 and 326 IAC 2-7, IDEM has specific time

periods to a issue permit for a new source or a modification to an existing source after receiving a complete application. IDEM agrees that an 18-month time frame for application review is excessive for the types of permits with review periods that are less than 18 months. Therefore, IDEM has revised the draft rule to reference the applicable time periods for review of permit applications for new sources and modifications to existing sources in 326 IAC 2-1.1-8 and 2-7.

Comment: A process should be defined to insure that information concerning controls is incorporated in operating permits. Everyone needs to know what maintenance and modifications relate to pollution control and what might be related to improvements in generating capacity. The permit modification process should be at no cost to industry and as streamlined as possible. (VCDH)

Response: 326 IAC 2-7 and 326 IAC 2-8 and 326 IAC 10-4-7 contain specific requirements for what information sources must submit when requesting a source or permit modification to a Part 70 permit or a permit revision to a Federally Enforceable State Operating Permit (FESOP). 326 IAC 2-7-5, 2-7-6, 2-7-10.5, 2-7-11, and 2-7-12 and 326 IAC 2-8-4, 2-8-5, 2-8-10, and 2-8-11 as well as 326 IAC 10-4-7 contain specific requirements on what information should be included in source and permit modifications to Part 70 permits and permit revisions to FESOPs for sources that will be subject to the draft rule when it is final. In addition, IDEM includes a technical support document (TSD) with every permit decision to describe the basis for issuing the permit decision. The TSD will include a discussion of the modification or change that triggered the requirement for the modification or revision and the effect of that modification or change on the capacity and the potential to emit of the source. 326 IAC 2 includes specific source and permit modification procedural requirements for Part 70 sources, including issuance schedules and fee requirements, and specific permit revision requirements for FESOP sources, including issuance schedules and fee requirements. IDEM will follow the existing rules for the issuance of modifications and revisions for changes required by the draft rule.

NO_x Allowance Tracking System

Comment: IDEM should verify that per 326 IAC 10-4-10(j), allocations do not expire and once held in an account, they can be used in any future year.

Response: Once an allowance has been allocated, the allowance is available for use until transferred, deducted for compliance, or retired.

Comment: There is an error in 326 IAC 10-4-10(d)(2)(C). The phrase "... any alternate NO_x authorized account representative any:" should have the second "any" deleted after "representative." (NS)

Response: IDEM has made the correction.

Comment: 326 IAC 10-4-10(d)(3)(C) and (D) address the procedure for changes to account representatives and alternate representatives and the retention of responsibility for the prior representative until U.S. EPA receives the superseding application. The responsibility should change with the postmarking, or dated receipt from a private carrier for shipping of the change of notice submittal, as allowed in other IDEM regulations for submittals. (NS)

Response: IDEM has discussed this issue with U.S. EPA and they have indicated that the language is needed to address problems that could occur during transitional periods between account representatives. U.S. EPA must know with certainty that the person making the submittal is the person responsible for the account and will not make a change until a new certificate has been received.

Comment: The language under 326 IAC 10-4-10(n) needs to be revised to say “twenty (20) business days” consistently throughout this section. (NS)

Response: IDEM agrees and has included the suggested change.

Compliance Date

Comment: We are concerned about whether the draft rules require adequate controls to meet the Indiana NO_x budget and whether the controls are required to be implemented by the May 31, 2004 deadline. IDEM should adopt a 2007 NO_x budget consistent with the SIP call and a May 31, 2004 compliance deadline. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI)

Response: IDEM has proposed rule language consistent with the model trading rule under the SIP call and a May 31, 2004 compliance deadline.

Comment: Shortages of skilled trade labor, materials of construction, and other issues beyond our reasonable control are likely to create electric system reliability concerns if the draft rule does not provide additional flexibility for the installation of controls. To help minimize risk, IDEM should establish a May 1, 2005 compliance date. (AEP) (IMA) (ICC)

Response: IDEM has included the compliance supplement pool provisions that U.S. EPA established for compliance extensions. U.S. EPA has clearly indicated that a rule with a compliance date later than May 31, 2004 will be disapproved.

Definitions

Comment: The definitions of EGU and large affected unit do not necessarily differentiate in terms of electrical generation. A unit greater than two hundred fifty (250) mmBtu/hour that serves a generator less than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid would not be subject to this rule. (III)

Comment: The definition of large affected unit should be revised to subdivision (A) and (C) consistent. A unit that serves an electric generator less than twenty-five (25) megawatts with potential to use no more than fifty percent (50%) of the electrical capacity should be defined as a large affected unit regardless of operation commencement. (III)

Comment: 326 IAC 10-4-2(15)(C) should be revised to include “to the grid” after “produces electricity for sale.” This would address cogeneration in which electricity is sold back to the source. (III)

Comment: We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(15)(A), 326 IAC 10-4-2(15)(B) and 326 IAC 10-4-2(15)(C) and recommend the language of 326 IAC 10-4-2(15)(C) be changed to say “and produces electricity for sale under a firm contract to the electric grid”. (NS)

Comment: We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(24)(A), 326 IAC 10-4-2(24)(B) and 326 IAC 10-4-2(24)(C) and recommend the language of 326 IAC 10-4-2(24)(C)(i) and (ii) be changed to say “producing electricity for sale under a firm contract to the electric grid”. (NS)

Response: U.S. EPA promulgated these definitions under the Section 126 rule. The definitions are intended to more clearly define the units that U.S. EPA sought to regulate under the SIP call and the Section 126 rule. By deleting certain dates, IDEM could make some units subject to this rule, even though U.S. EPA did not include them during the rule development. There was concern with the possible deregulation of the electricity generating system that new sources would seek to circumvent the rules by installing large combustion units serving small, less than twenty-five (25) megawatt generators. There has also been increased cogeneration projects that U.S. EPA believed should be subject to the rule. Units commencing operation after a certain year, serving generators less than twenty-five (25) megawatts and having heat input capacity over the threshold, were considered by U.S. EPA to be large nonEGUs under the Section 126 rule.

Comment: The definition of “source” is too vague and language should be included to clarify that separate corporations on-site are not part of the same source. (III)

Response: The definition of “source” is the same as the “source” definition under 40 CFR 72.2 and does not appear to be inconsistent with the definition of “stationary source” in other state and federal rules. It is important that there be consistency in definitions among the states in the trading program so that U.S. EPA can administer the program properly.

Comment: We believe that the definition of “commence commercial operation” should be changed. A unit should not be deemed to have begun commercial operation during the period of testing prior to beginning normal operation. The IDEM permitting rules acknowledge the need for start up testing prior to normal operation and include relief from certain requirements during the period of

bringing the unit into commercial operation. Construction permits also acknowledge this unique time when the emission device is in the final phases of construction prior to beginning normal commercial operations. Therefore, we recommend the language “including test generation” be deleted from this definition. Similarly, the term “generate electricity for sale or use” should be deleted from the definition. The “for use” term is too broad and could be misinterpreted to inappropriately trip a emission source into “commercial operation” upon generation of electricity for use internal to the operation of the emission source (machine). Similarly, the term “generate electricity for sale” is too broad and should be changed to limit the provision to “the generation of electricity for sale to the electric grid”. (NS)

Comment: The definition of “commence operation” should be modified to exclude the period of testing prior to the beginning of normal operation. (NS)

Response: The suggested changes could have implications on applicability determinations and timing requirements under the rule. IDEM has consulted with U.S. EPA concerning this issue and it is U.S. EPA’s position that the definitions should include “test generation” because NO_x emissions that must be accounted for occur during these times.

Comment: Because this rule is intended to be in place only during the ozone control period, we believe that the “maximum design heat input” should be based on the maximum design heat input that is achievable during the weather conditions of the ozone control period and exclude any values based on conditions that are not representative of the ozone control period. (NS)

Comment: Similar to the above comment for 326 IAC 10-4-2(26), the “maximum potential hourly heat input” should not be based on conditions that are not representative of the ozone control period.

Comment: We appreciate the IDEM’s recognition of the necessity of and inclusion of the exemptions during periods of start up, shut down and upsets. However, because this rule is intended to only be applicable during the ozone control period, we suggest that IDEM add the provision that “Maximum potential NO_x emission rate” be limited to the operating conditions only during the ozone control period, excluding the start up, shut down and upset periods. It would be inappropriate to determine the maximum potential NO_x emission rate (to be used for the ozone control period only) based on operating characteristics that are not achievable during the ozone control period.

Comment: Several of the definitions relate to the parameters used to calculate a NO_x emission rate absent monitoring data. Instead of specifying definitions for parameters to be utilized in computations that may unfairly overestimate the emissions, we believe that the IDEM should instead include rule provisions that allow for data substitution, as is allowed in the U.S. EPA’s Acid Rain program.

Comment: As expressed in our comment above, we believe that the definition of this parameter should be limited to the “maximum rated hourly heat input” that is achievable only during the ozone control period. An hourly heat input that is achievable during winter conditions should not be

used for the summer ozone control period. (NS)

Comment: As previously stated, we believe that because this rule is applicable only during the ozone control period, the parameters that are temperature dependent should be acknowledged and only included as such in the rule. Therefore, the “nameplate capacity”, in reference to the maximum electrical generating output, should only be the electrical generating output that is capable of being achieved during the particular operating period in question. (NS)

Response: IDEM has discussed the suggested changes with U.S. EPA and U.S. EPA has indicated that the definitions should remain as is. It is especially important to have language consistent with other states in the regional trading program.

Comment: We believe that if 326 IAC 10-4-2(31) is necessary to define, that the averaging period to which the emission limit applies is integral to fairly represent the emission limitations and not artificially and inappropriately increase the stringency of the source’s emission limit. Therefore, we recommend that the phrase “regardless of the averaging period to which the emissions limitation applies” should be deleted. (NS)

Response: If the intent is to convert an emission limitation so that it is greater than the published emission limitation, and therefore, receive a larger allocation, IDEM disagrees. This would be inconsistent with other changes that require an allocation based on the more stringent emission rate.

Comment: 326 IAC 10-4-2(46) may need further clarification or modification with respect to the NO_x trading program depending upon the treatment of the Section 126 sources and the outcome of the pending litigation. (NS)

Response: IDEM has revised the language of the rule to provide for a smooth transition for Section 126 sources to the state NO_x rule. Changes to this definition do not appear to be necessary at this time.

Comment: It is inappropriate to characterize and define a purchaser of power from a NO_x budget unit as an owner under 326 IAC 10-4-2(52)(C). The purchaser of power from a NO_x budget unit, even if it is a life-of-the-unit, firm power contractual arrangement, is not the owner of the unit and not necessarily able to exert any control on the operation of the NO_x budget unit or control its emissions. To include a purchaser of power from a NO_x budget unit as an owner inappropriately assigns to such a person authority and responsibility that does not exist. (NS)

Response: IDEM understands the concern. Discussions with U.S. EPA indicate that they do believe that a “purchaser” can exert control and the definition should not be changed.

Comment: The definition of ozone control period should be examined carefully for use given the court extension of the compliance deadline to May 31, 2004. For simplicity, we recommend that

the definition be modified to differentiate the ozone control period in the year 2004 from subsequent years. This is especially important for the compliance language included in the definition of “ton” or “tonnage” under 326 IAC 10-4-2(62) and elsewhere throughout the rule. (NS)

Response: IDEM agrees and will make the necessary changes.

Comment: The use of the phrase “other specified time period” in 326 IAC 10-4-2(65) raises concerns regarding potential inappropriate applicability to periods outside of the ozone control period. We note that IDEM is careful to include the term “in any ozone control period” when referring to the total or gross output of a unit. Believing that it is the intent of IDEM to only include the time periods during the ozone control period, we suggest IDEM change the language “...period, or other specified time period, produced...” to “...other specified time period during the ozone control period, produced...”. (NS)

Comment: The language under 326 IAC 10-4-2(65)(B) should be revised to include “pounds of steam at the total steam pressure (psia). (III)

Response: IDEM has reviewed the definition and the rule language. This definition does not appear in the rule and should be deleted.

Section 126 Rule

Comment: The inclusion of an exemption for sources affected by the Section 126 rule is supported. U.S. EPA initially proposed that the NO_x SIP call and the Section 126 rules as companion rules to implement significant NO_x reductions. Only in the event a state SIP revision proved inadequate would the federal Section 126 rule become effective. U.S. EPA has altered this proposal and has concluded that unless a state adopts a rule that includes a May 1, 2003 compliance deadline, the Section 126 rule will stand. While supporting the exemption, IDEM should continue to discuss the situation with U.S. EPA and allow for the removal of the Section 126 rule with the submittal of an approvable SIP rule. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (NS)

Comment: IDEM should include the federal 126 rulemaking in this rule and administer that program along with this rule. (IMPA)

Comment: Sources affected by the Section 126 rule should not be exempt from this rule beginning in 2004. If there is an issue with the May 31, 2004 deadline, this date can be moved to May 1, 2004. (VCDH)

Response: IDEM is committed to a smooth transition for Section 126 sources to the state NO_x rule and has included language that would make the Section 126 sources subject to this rule on May 1, 2004. We will continue to discuss this approach with U.S. EPA.

Compliance Certifications

Comment: It is unclear why each unit must meet allocations as opposed to the source. Compliance should only have to be certified for the source, which would avoid the need to conduct trading among units within the source. (III)

Response: The trading program was established to achieve reductions from specific units and allocations are distributed to individual units consistent with the manner in which the Acid Rain program was developed. Because each unit receives a specific allocation, compliance must be certified for each unit. Even if source certification was allowed, sources would be “trading” among units for overall compliance.

Comment: The November 30th compliance certification date does not allow enough time to trade once the ozone season is complete and reallocations from set-asides known. Sources will be required to scramble to buy the last few tons to come into compliance within a narrow time frame. (III)

Response: The compliance certification date is established by U.S. EPA and U.S. EPA will be administering the program, not IDEM. It is unlikely that U.S. EPA would allow for various states to have different compliance certification dates. In addition, sources know how allowances are calculated and what is necessary for compliance. A source should generally know well in advance of the compliance certification date whether or not allowances will need to be purchased and there are other allowances available than just those reallocated at the end of the season.

SECTION 7 NESHAPS

Bold and single underline = new language since preliminary adoption

Bold, strikeout, and single underline = new language added at preliminary adoption and proposed for deletion at final adoption

~~Roman, strikeout, and single underline~~ = existing language proposed for deletion at final adoption

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED AND PROPOSED FOR FINAL ADOPTION WITH SUGGESTED CHANGES

LSA Document #00-183

DIGEST

Amends 326 IAC 20-23-1 concerning off-site waste and recovery operations. Adds 326 IAC 20-33 concerning pulp and paper production (noncombustion). Adds 326 IAC 20-34 concerning phosphoric acid manufacturing and phosphate fertilizers production. Adds 326 IAC 20-35 concerning tanks—level 1. Adds 326 IAC 20-36 concerning containers. Adds 326 IAC 20-37 concerning surface impoundments. Adds 326 IAC 20-38 concerning individual drain systems. Adds 326 IAC 20-39 concerning closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process. Adds 326 IAC 20-40 concerning equipment leaks—control level 1. Adds 326 IAC 20-41 concerning equipment leaks—control level 2. Adds 326 IAC 20-42 concerning oil-water separators and organic-water separators. Adds 326 IAC 20-43 concerning storage vessels (tanks)—control level 2. Adds 326 IAC 20-44 concerning generic maximum achievable control technology standards. Adds 326 IAC 20-45 concerning pesticide active ingredient. Adds 326 IAC 20-46 concerning mineral wool production. Adds 326 IAC 20-47 concerning wool fiberglass manufacturing. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Section 7 Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3211).

Date of First Hearing: December 6, 2000.

Proposed Rule and Notice of Second Hearing: January 1, 2001, Indiana Register (24 IR 1056).

Date of Second Hearing: February 7, 2001.

326 IAC 20-23	326 IAC 20-40
326 IAC 20-33	326 IAC 20-41
326 IAC 20-34	326 IAC 20-42

326 IAC 20-35	326 IAC 20-43
326 IAC 20-36	326 IAC 20-44
326 IAC 20-37	326 IAC 20-45
326 IAC 20-38	326 IAC 20-46
326 IAC 20-39	326 IAC 20-47

SECTION 1. 326 IAC 20-23-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-23-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners or operators of plant sites as provided in 40 CFR 63.680.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DD, 61 FR 34140* (July 1, 1996), and 64 FR 38963 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ **rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 ~~and or~~ are available for copying at the Indiana Department of Environmental Management, Office of Air ~~Management~~ **Quality**, Indiana Government Center-North, 100 North Senate Avenue, **Tenth Floor**, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-23-1; filed Apr 23, 1998, 9:30 a.m.: 21 IR 3341*)

SECTION 2. 326 IAC 20-33 IS ADDED TO READ AS FOLLOWS:

Rule 33. Pulp and Paper Production; Noncombustion

326 IAC 20-33-1 Pulp and paper production, noncombustion; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of processes that produce pulp, paper, or paperboard, as provided in 40 CFR 63.440, 63 FR 18503 (April 15, 1998)*, and that use any of the following processes and materials:

- (1) Kraft, soda, sulfite, or semichemical pulping processes.
- (2) Mechanical pulping processes.

(3) Any process using secondary or nonwood fibers.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart S, 63 FR 18503 (April 15, 1998)*, national emission standards for hazardous air pollutants from the pulp and paper industry.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-33-1*)

SECTION 3. 326 IAC 20-34 IS ADDED TO READ AS FOLLOWS:

Rule 34. Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

**326 IAC 20-34-1 Phosphoric acid manufacturing and phosphate fertilizers production;
applicability; incorporation by reference of federal standards**

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each:

- (1) phosphoric acid manufacturing plant as provided in 40 CFR 63.600, 64 FR 31357 (June 10, 1999)*; and**
- (2) phosphate fertilizers production plant as provided in 40 CFR 63.620, 64 FR 31357 (June 10, 1999)*.**

(b) The air pollution control board incorporates by reference the following:

- (1) 40 CFR 63, Subpart AA, 64 FR 31376 (June 10, 1999)*, national emission standards for hazardous air pollutants from phosphoric acid manufacturing plants.**
- (2) 40 CFR 63, Subpart BB, 64 FR 31382 (June 10, 1999)*, national emission standards for hazardous air pollutants from phosphate fertilizers production plants.**

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana

Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-34-1*)

SECTION 4. 326 IAC 20-35 IS ADDED TO READ AS FOLLOWS:

Rule 35. Tanks—Level 1

326 IAC 20-35-1 Tanks—level 1; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from tanks for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart OO for such air emission control as provided in 40 CFR 63.900, 61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OO, 61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*, national emission standards for tanks—level 1.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana.** (*Air Pollution Control Board; 326 IAC 20-35-1*)

SECTION 5. 326 IAC 20-36 IS ADDED TO READ AS FOLLOWS:

Rule 36. Containers

326 IAC 20-36-1 Containers; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from containers for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart PP for such air emission control as provided in 40 CFR 63.920, 61 FR 34186 (July 1, 1996), and 64 FR 38987

(July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PP, 61 FR 34186 (July 1, 1996), and 64 FR 38987 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*, national emission standards for containers.

**These documents are incorporated by reference. Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-36-1)*

SECTION 6. 326 IAC 20-37 IS ADDED TO READ AS FOLLOWS:

Rule 37. Surface Impoundments

326 IAC 20-37-1 Surface impoundments; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from surface impoundments for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart QQ for such air emission control as provided in 40 CFR 63.940, 61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQ, 61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*, national emission standards for surface impoundments.

**These documents are incorporated by reference. Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-37-1)*

SECTION 7. 326 IAC 20-38 IS ADDED TO READ AS FOLLOWS:

Rule 38. Individual Drain Systems

326 IAC 20-38-1 Individual drain systems; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from individual drain systems for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart RR for such air emission control as provided in 40 CFR 63.960, 61 FR 34193 (July 1, 1996), and 64 FR 38989 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RR, 61 FR 34193 (July 1, 1996), and 64 FR 38989 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*, national emission standards for individual drain systems.

**These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-38-1)*

SECTION 8. 326 IAC 20-39 IS ADDED TO READ AS FOLLOWS:

Rule 39. Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process

326 IAC 20-39-1 Closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule include requirements for closed vent systems, control devices, and routing of air emissions to a fuel gas system or process. These provisions apply when another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart SS

for such air emission control as provided in 40 CFR 63.980, 64 FR 34866 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart SS, 64 FR 34866 (June 29, 1999)*, national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-39-1*)

SECTION 9. 326 IAC 20-40 IS ADDED TO READ AS FOLLOWS:

Rule 40. Equipment Leaks—Control Level 1

326 IAC 20-40-1 Equipment leaks—control level 1; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart **of 40 CFR 60, 40 CFR 61, or 40 CFR 63** references the use of Subpart TT for such air emission control as provided in 40 CFR 63.1000, 64 FR 34886 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart TT, 64 FR 34886 (June 29, 1999)*, national emission standards for equipment leaks—control level 1.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-40-1*)

SECTION 10. 326 IAC 20-41 IS ADDED TO READ AS FOLLOWS:

Rule 41. Equipment Leaks—Control Level 2

326 IAC 20-41-1 Equipment leaks—control level 2 standards; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart UU for such air emission control as provided in 40 CFR 63.1019, 64 FR 34899 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart UU, 64 FR 34899 (June 29, 1999)*, national emission standards for equipment leaks—control level 2 standards.

**These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-41-1)*

SECTION 11. 326 IAC 20-42 IS ADDED TO READ AS FOLLOWS:

Rule 42. Oil-Water Separators and Organic-Water Separators

326 IAC 20-42-1 Oil-water separators and organic-water separators; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from oil-water separators and organic-water separators for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart VV for such air emission control as provided in 40 CFR 63.1040, 61 FR 34195 (July 1, 1996) and 64 FR 38991 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VV, 61 FR 34195 (July 1, 1996), and 64 FR 38991 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*,

national emission standards for oil-water separators and organic-water separators.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-42-1*)

SECTION 12. 326 IAC 20-43 IS ADDED TO READ AS FOLLOWS:

Rule 43. Storage Vessels (Tanks)–Control Level 2

326 IAC 20-43-1 Storage vessels (tanks)–control level 2; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from storage vessels for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart WW for such air emission control as provided in 40 CFR 63.1060, 64 FR 34918 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart WW, 64 FR 34918 (June 29, 1999)*, national emission standards for storage vessels (tanks)–control level 2.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-43-1*)

SECTION 13. 326 IAC 20-44 IS ADDED TO READ AS FOLLOWS:

Rule 44. Generic Maximum Achievable Control Technology

326 IAC 20-44-1 Generic maximum achievable control technology standards; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to source categories and affected sources specified in 40 CFR 63.1100, 64 FR 34921 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart YY, 64 FR 34921 (June 29, 1999)*, national emission standards for hazardous air pollutants for source categories; generic maximum achievable control technology standards.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-44-1*)

SECTION 14. 326 IAC 20-45 IS ADDED TO READ AS FOLLOWS:

Rule 45. Pesticide Active Ingredient

326 IAC 20-45-1 Pesticide active ingredient production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to affected sources as provided in 40 CFR 63.1360, 64 FR 33549 (June 23, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart MMM, 64 FR 33549 (June 23, 1999)*, national emission standards for hazardous air pollutants for pesticide active ingredient production.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 **and or** are available for copying at the Indiana Department of Environmental Management, Office of Air **Management Quality**, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-45-1*)

SECTION 15. 326 IAC 20-46 IS ADDED TO READ AS FOLLOWS:

Rule 46. Mineral Wool Production

326 IAC 20-46-1 Mineral wool production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to mineral wool production facilities as provided in 40 CFR 63.1177, 64 FR 29503 (June 1, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DDD, 64 FR 29503 (June 1, 1999)*, national emission standards for hazardous air pollutants from mineral wool production.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-46-1)**

SECTION 16. 326 IAC 20-47 IS ADDED TO READ AS FOLLOWS:

Rule 47. Wool Fiberglass Manufacturing

326 IAC 20-47-1 Wool fiberglass manufacturing; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each wool fiberglass manufacturing facility as provided in 40 CFR 63.1380, 64 FR 31695 (June 14, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNN, 64 FR 31695 (June 14, 1999)*, national emission standards for hazardous air pollutants for wool fiberglass manufacturing.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-47-1*)**

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED

Proposed Rule

LSA Document #00-183

DIGEST

Amends 326 IAC 20-23-1 concerning off-site waste and recovery operations. Adds 326 IAC 20-33 concerning pulp and paper production (noncombustion). Adds 326 IAC 20-34 concerning phosphoric acid manufacturing and phosphate fertilizers production. Adds 326 IAC 20-35 concerning tanks—level 1. Adds 326 IAC 20-36 concerning containers. Adds 326 IAC 20-37 concerning surface impoundments. Adds 326 IAC 20-38 concerning individual drain systems. Adds 326 IAC 20-39 concerning closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process. Adds 326 IAC 20-40 concerning equipment leaks—control level 1. Adds 326 IAC 20-41 concerning equipment leaks—control level 2. Adds 326 IAC 20-42 concerning oil-water separators and organic-water separators. Adds 326 IAC 20-43 concerning storage vessels (tanks)—control level 2. Adds 326 IAC 20-44 concerning generic maximum achievable control technology standards. Adds 326 IAC 20-45 concerning pesticide active ingredient. Adds 326 IAC 20-46 concerning mineral wool production. Adds 326 IAC 20-47 concerning wool fiberglass manufacturing. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Section 7 Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3211).

Date of First Hearing: December 6, 2000.

326 IAC 20-23-1	326 IAC 20-40
326 IAC 20-33	326 IAC 20-41
326 IAC 20-34	326 IAC 20-42
326 IAC 20-35	326 IAC 20-43
326 IAC 20-36	326 IAC 20-44
326 IAC 20-37	326 IAC 20-45
326 IAC 20-38	326 IAC 20-46
326 IAC 20-39	326 IAC 20-47

SECTION 1. 326 IAC 20-23-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-23-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners or operators of plant sites as provided in 40 CFR 63.680.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DD, 61 FR 34140* (July 1, 1996), **and 64 FR 38963 (July 20, 1999)***, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this **section rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, **Tenth Floor**, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-23-1; filed Apr 23, 1998, 9:30 a.m.: 21 IR 3341*)

SECTION 2. 326 IAC 20-33 IS ADDED TO READ AS FOLLOWS:

Rule 33. Pulp and Paper Production; Noncombustion

326 IAC 20-33-1 Pulp and paper production, noncombustion; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of processes that produce pulp, paper, or paperboard, as provided in 40 CFR 63.440, 63 FR 18503 (April 15, 1998)*, and that use any of the following processes and materials:

- (1) Kraft, soda, sulfite, or semichemical pulping processes.
- (2) Mechanical pulping processes.
- (3) Any process using secondary or nonwood fibers.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart S, 63 FR 18503 (April 15, 1998)*, national emission standards for hazardous air pollutants from the pulp and paper industry.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-33-1*)**

SECTION 3. 326 IAC 20-34 IS ADDED TO READ AS FOLLOWS:

Rule 34. Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

326 IAC 20-34-1 Phosphoric acid manufacturing and phosphate fertilizers production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each:

(1) phosphoric acid manufacturing plant as provided in 40 CFR 63.600, 64 FR 31357 (June 10, 1999)*; and

(2) phosphate fertilizers production plant as provided in 40 CFR 63.620, 64 FR 31357 (June 10, 1999)*.

(b) The air pollution control board incorporates by reference the following:

(1) 40 CFR 63, Subpart AA, 64 FR 31376 (June 10, 1999)*, national emission standards for hazardous air pollutants from phosphoric acid manufacturing plants.

(2) 40 CFR 63, Subpart BB, 64 FR 31382 (June 10, 1999)*, national emission standards for hazardous air pollutants from phosphate fertilizers production plants.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-34-1*)**

SECTION 4. 326 IAC 20-35 IS ADDED TO READ AS FOLLOWS:

Rule 35. Tanks—Level 1

326 IAC 20-35-1 Tanks—level 1; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from tanks for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart OO for such air emission control as provided in 40 CFR 63.900, 61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OO, 61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*, national emission standards for tanks—level 1.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-35-1*)**

SECTION 5. 326 IAC 20-36 IS ADDED TO READ AS FOLLOWS:

Rule 36. Containers

326 IAC 20-36-1 Containers; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from containers for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart PP for such air emission control as provided in 40 CFR 63.920, 61 FR 34186 (July 1, 1996), and 64 FR 38987 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PP, 61 FR 34186 (July 1, 1996), and 64 FR 38987 (July 20, 1999)*, national emission standards for containers.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-36-1*)**

SECTION 6. 326 IAC 20-37 IS ADDED TO READ AS FOLLOWS:

Rule 37. Surface Impoundments

326 IAC 20-37-1 Surface impoundments; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from surface impoundments for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart QQ for such air emission control as provided in 40 CFR 63.940, 61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQ, 61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*, national emission standards for surface impoundments.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-37-1*)**

SECTION 7. 326 IAC 20-38 IS ADDED TO READ AS FOLLOWS:

Rule 38. Individual Drain Systems

326 IAC 20-38-1 Individual drain systems; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from individual drain systems for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart RR for such air emission control as provided in 40 CFR 63.960, 61 FR 34193 (July 1, 1996), and 64 FR 38989 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RR, 61 FR 34193 (July 1, 1996), and 64 FR 38989 (July 20, 1999)*, national emission standards for individual drain systems.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-38-1*)**

SECTION 8. 326 IAC 20-39 IS ADDED TO READ AS FOLLOWS:

Rule 39. Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process

326 IAC 20-39-1 Closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule include requirements for closed vent systems, control devices, and routing of air emissions to a fuel gas system or process. These provisions apply when another subpart references the use of Subpart SS for such air emission control as provided in 40 CFR 63.980, 64 FR 34866 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart SS, 64 FR 34866 (June 29, 1999)*, national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-39-1*)**

SECTION 9. 326 IAC 20-40 IS ADDED TO READ AS FOLLOWS:

Rule 40. Equipment Leaks—Control Level 1

326 IAC 20-40-1 Equipment leaks—control level 1; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart references the use of Subpart TT for such air emission control as provided in 40 CFR 63.1000, 64 FR 34886 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart TT, 64 FR 34886 (June 29, 1999)*, national emission standards for equipment leaks—control level 1.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-40-1*)**

SECTION 10. 326 IAC 20-41 IS ADDED TO READ AS FOLLOWS:

Rule 41. Equipment Leaks—Control Level 2

326 IAC 20-41-1 Equipment leaks—control level 2 standards; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart references the use of Subpart UU for such air emission control as provided in 40 CFR 63.1019, 64 FR 34899 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart UU, 64 FR 34899 (June 29, 1999)*, national emission standards for equipment leaks—control level 2 standards.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-41-1*)**

SECTION 11. 326 IAC 20-42 IS ADDED TO READ AS FOLLOWS:

Rule 42. Oil-Water Separators and Organic-Water Separators

326 IAC 20-42-1 Oil-water separators and organic-water separators; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the control of air emissions from oil-water separators and organic-water separators for which another subpart of 40 CFR 60, 40 CFR 61, or 40 CFR 63 references the use of Subpart VV for such air emission control as provided in 40 CFR 63.1040, 61 FR 34195 (July 1, 1996) and 64 FR 38991 (July 20, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VV, 61 FR 34195 (July 1, 1996) and 64 FR 38991 (July 20, 1999)*, national emission standards for oil-water separators and organic-water separators.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North**

Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-42-1*)

SECTION 12. 326 IAC 20-43 IS ADDED TO READ AS FOLLOWS:

Rule 43. Storage Vessels (Tanks)–Control Level 2

326 IAC 20-43-1 Storage vessels (tanks)–control level 2; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from storage vessels for which another subpart references the use of Subpart WW for such air emission control as provided in 40 CFR 63.1060, 64 FR 34918 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart WW, 64 FR 34918 (June 29, 1999)*, national emission standards for storage vessels (tanks)–control level 2.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-43-1*)

SECTION 13. 326 IAC 20-44 IS ADDED TO READ AS FOLLOWS:

Rule 44. Generic Maximum Achievable Control Technology

326 IAC 20-44-1 Generic maximum achievable control technology standards; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to source categories and affected sources specified in 40 CFR 63.1100, 64 FR 34921 (June 29, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart YY, 64 FR 34921 (June 29, 1999)*, national emission standards for hazardous air pollutants for source categories; generic maximum achievable control technology standards.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-44-1*)

SECTION 14. 326 IAC 20-45 IS ADDED TO READ AS FOLLOWS:

Rule 45. Pesticide Active Ingredient

326 IAC 20-45-1 Pesticide active ingredient production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to affected sources as provided in 40 CFR 63.1360, 64 FR 33549 (June 23, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart MMM, 64 FR 33549 (June 23, 1999)*, national emission standards for hazardous air pollutants for pesticide active ingredient production.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-45-1*)

SECTION 15. 326 IAC 20-46 IS ADDED TO READ AS FOLLOWS:

Rule 46. Mineral Wool Production

326 IAC 20-46-1 Mineral wool production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to mineral wool production facilities as provided in 40 CFR 63.1177, 64 FR 29503 (June 1, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DDD, 64 FR 29503 (June 1, 1999)*, national emission standards for hazardous air pollutants from mineral wool production.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-46-1*)**

SECTION 16. 326 IAC 20-47 IS ADDED TO READ AS FOLLOWS:

Rule 47. Wool Fiberglass Manufacturing

326 IAC 20-47-1 Wool fiberglass manufacturing; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each wool fiberglass manufacturing facility as provided in 40 CFR 63.1380, 64 FR 31695 (June 14, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNN, 64 FR 31695 (June 14, 1999)*, national emission standards for hazardous air pollutants for wool fiberglass manufacturing.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North**

Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-47-1*)

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-183

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 6, 2000, the air pollution control board (board) conducted the first public hearing/board meeting concerning amendments to rule 326 IAC 20-23-1, and the development of new rules 326 IAC 20-33, 326 IAC 20-34, 326 IAC 20-35, 326 IAC 20-36, 326 IAC 20-37, 326 IAC 20-38, 326 IAC 20-39, 326 IAC 20-40, 326 IAC 20-41, 326 IAC 20-42, 326 IAC 20-43, 326 IAC 20-44, 326 IAC 20-45, 326 IAC 20-46, and 326 IAC 20-47. No comments were made at the first hearing.



Indiana Department of Environmental Management
Office of Air Management
Rule Fact Sheet
December 6, 2000

DEVELOPMENT OF NEW RULES CONCERNING INCORPORATION OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR OFF-SITE WASTE AND RECOVERY OPERATIONS, PULP AND PAPER PRODUCTION (NONCOMBUSTION), PHOSPHORIC ACID MANUFACTURING AND PHOSPHATE FERTILIZERS PRODUCTION, GENERIC MACT, PESTICIDE ACTIVE INGREDIENT, MINERAL WOOL PRODUCTION, AND WOOL FIBERGLASS MANUFACTURING #00-183(APCB)

Overview

This rulemaking incorporates by reference national emission standards for hazardous air pollutants (NESHAP) for off-site waste and recovery operations, pulp and paper production, phosphoric acid manufacturing, phosphate fertilizers production, generic maximum achievable control technology (MACT), pesticide active ingredient, mineral wool production, and wool fiberglass manufacturing.

Rules specifying MACT for subcategories in the off-site waste and recovery operations NESHAP are included for tanks, containers, surface impoundments, individual drain systems, and oil-water separators and organic-water separators. The generic MACT NESHAP cross-references subcategories for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, and equipment leaks, which are also listed as separate rules.

Citations Affected

Amends: 326 IAC 20-23.

Adds: 326 IAC 20-33; 326 IAC 20-34; 326 IAC 20-35; 326 IAC 20-36; 326 IAC 20-37; 326 IAC 20-38; 326 IAC 20-39; 326 IAC 20-40; 326 IAC 20-41; 326 IAC 20-42; 326 IAC 20-

43; 326 IAC 20-44; 326 IAC 20-45; 326 IAC 20-46; 326 IAC 20-47.

Affected Persons

Off-site waste and recovery operations currently applies to four sources in Indiana:

Reclaimed Energy, Connersville
Eli Lilly and Company, Clinton
Eli Lilly and Company, Lafayette
Reilly Industries, Inc., Indianapolis

Pulp and paper production, non-combustion applies to facilities that produce pulp, paper or paperboard using specified processes. There is one source subject to this rule (International Paper, Terre Haute, IN).

Phosphoric acid manufacturing and phosphate fertilizers production currently has no affected sources in Indiana.

Generic MACT currently has one source subject to this rule (GE Plastics, Mt. Vernon, IN).

Pesticide active ingredient currently has no known affected sources in Indiana.

Mineral wool production and wool fiberglass manufacturing applies to mineral wool production and wool fiberglass manufacturing facilities. Sources are generally located in eastern and north central Indiana. Sources subject to both rules include:

ANCO Products, Inc., Elkhart

Molded Acoustical, Elkhart
U.S. Mineral Products, Huntington
Sloss Industries, Alexandria
Knauf Fiberglass, Shelbyville
Celotex Corporation, Lagro
Thermafiber LLC Wabash, Wabash
L.C. Cassidy & Son, Inc., Wabash
Johns Manville International, Richmond
Jet Composites, Inc., Bluffton

Potential Cost

There is no additional cost associated with this rulemaking above and beyond the costs associated with the federal rules, which are already in effect.

Outreach

IDEM mailed draft rule language and a fact sheet regarding this rulemaking to affected sources and interested parties.

Description

On July 16, 1992, (57 FR 31576), U.S. EPA published a list of industrial groups (i.e., source categories) that emit one or more of the one hundred eighty-eight (188) hazardous air pollutants currently listed in the Clean Air Act. The Clean Air Act requires U.S. EPA to develop national emission standards for hazardous air pollutants (NESHAPs) that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. This state rulemaking would incorporate by reference the following NESHAPs:

Off-site waste and recovery operations. On July 1, 1996, U.S. EPA promulgated national emission standards (61 FR 34140, subsequently amended in 64 FR 38950) for facilities that receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. The rule requires sources in this category to reduce hazardous air pollutant emissions. General provisions are listed under Subpart DD of the federal rule. The final rule is based on a combination of control equipment and operation standards as well as work practice standards.

Specific requirements for monitoring, record keeping, and reporting are specified in the regulation. Subcategories of off-site waste and recovery operations have been identified and include specific control requirements under Subpart OO (tanks), Subpart PP (containers), Subpart QQ (surface impoundments), Subpart RR (individual drain systems), Subpart VV (oil-water separators and organic-water separators). These Subparts are being presented as separate rules under 326 IAC 20-23, 326 IAC 20-35, 326 IAC 20-36, 326 IAC 20-37, 326 IAC 20-38, and 326 IAC 20-42, respectively. U.S. EPA estimates that this rule will reduce hazardous air pollutant emissions by approximately forty-seven thousand (47,000) tons per year nationwide. The compliance date for existing sources was February 1, 2000. The compliance date for new or reconstructed sources is upon startup. The federal rule was effective on September 20, 1999.

Pulp and paper production facilities. On April 15, 1998, U.S. EPA promulgated national emission standards (63 FR 18503) to reduce hazardous air pollutant emissions from pulp and paper production facilities. Regulated categories and entities include pulp mills and integrated mills (i.e., mills that manufacture pulp and paper/paperboard) that mechanically, chemically, or semichemically pulp wood fiber using kraft, sulfite, or soda; pulp secondary fiber; or pulp nonwood fiber. This NESHAP specifies emission standards for pulping processes and bleaching processes. The emission standards for pulping and bleaching processes provide several options for compliance, including a pollution prevention option. This NESHAP is being presented under 326 IAC 20-33. The hazardous air pollutants emitted by facilities covered by this NESHAP include compounds such as methanol, chlorinated compounds, formaldehyde, benzene, and xylene. This final NESHAP is estimated to reduce baseline emissions of hazardous air pollutants by sixty-five percent (65%) nationally or one hundred fifty-three thousand one hundred seventy-eight (153,178) tons per year. With a few exceptions, existing sources must comply with the NESHAP no later than April 16, 2001. New or reconstructed sources must comply with

the NESHAP upon startup. The federal rule was effective on June 15, 1998.

Phosphoric acid manufacturing and phosphate fertilizer production. On June 10, 1999, U.S. EPA promulgated national emission standards (64 FR 31357) to reduce hazardous air pollutant emissions from phosphoric acid manufacturing and phosphate fertilizers production facilities. This NESHAP is being presented under 326 IAC 20-34. Hazardous air pollutants emitted by the facilities covered by this rule include hydrogen fluoride, arsenic, beryllium, cadmium, chromium, manganese, mercury and nickel (hazardous air pollutant metals); and methyl isobutyl ketone. Implementing MACT-level controls is expected to reduce these hazardous air pollutant emissions from regulated sources by about three hundred forty-five (345) tons per year nationwide. This rule sets emission limits for the following emission points at affected sources or facilities: wet process phosphoric acid plants, superphosphoric acid plants, purified phosphoric acid plants, phosphate rock dryers, phosphate rock calciners, mono and diammonium phosphate fertilizer plants, and granular triple superphosphate fertilizer plants and storage buildings. The rule is structured to limit emissions across process lines that include several different emissions points for a given production unit. The rule establishes a single limit for each process line. This allows owners and operators the flexibility to arrange, operate, and control each line in the most efficient manner. Process lines for sources subject to the requirement in this rule will be exempted from otherwise applicable, less stringent federal new source performance standards. Each owner or operator of an existing affected source at a phosphoric acid manufacturing plant shall achieve compliance with the requirements of this NESHAP no later than June 10, 2002. Each owner or operator of a new phosphoric acid manufacturing plant must achieve compliance with the requirements upon startup of operations. The federal rule was effective on June 10, 1999.

Generic MACT. On June 29, 1999, U.S. EPA promulgated a program (64 FR 34853) for

setting national emission standards for hazardous air pollutants for certain small source categories consisting of five (5) or fewer major sources.

The program consists of a consolidated rulemaking package that provides general control requirements for certain source categories. Generic MACT standards, Subpart YY, cross-references other Subparts of the generic MACT NESHAP. This NESHAP is being presented under 326 IAC 20-44.

Categories being cross-referenced are included under Subpart SS (closed vent systems, recovery devices, and routing to a fuel gas system or a process), Subpart TT (equipment leaks—control level 1), Subpart UU (equipment leaks—control level 2 standards), Subpart WW (storage vessels—control level 2) and are being presented as separate rules under 326 IAC 20-39, 326 IAC 20-40, 326 IAC 20-41, and 326 IAC 20-43, respectively. The “generic MACT” standards establish an alternative methodology for making maximum achievable control technology determinations for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories. The basic objectives of the generic MACT program are to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in MACT standards development. The final rule promulgates emission standards for acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production. U.S. EPA estimates that the impact on hazardous air pollutant emissions will be negligible because sources that would be subject to the requirements of this NESHAP are already well controlled. The owner or operator of an existing affected source must comply with the NESHAP requirements by June 29, 2002. The owner or operator of a new or reconstructed affected source must achieve compliance with the requirements upon startup. If construction or reconstruction commenced after October 14, 1998, but before the effective date of the standards, the affected source must comply with the NESHAP requirements no later than July 1, 2002. The federal rule was effective on June 29, 1999.

Pesticide active ingredient. On June 23, 1999, U.S. EPA promulgated national emission standards (64 FR 33549) to reduce hazardous air pollutant emissions from pesticide active ingredient manufacturing operations. Regulated pesticide active ingredients are used to manufacture insecticide, herbicide, and fungicide pesticide products. The final rule controls emissions from the following areas in the manufacturing process: process vents; storage vessels; waste water and associated treatment residuals; certain equipment (e.g., pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valve connectors, and instrumentation systems); and heat exchange systems. This NESHAP is being presented under 326 IAC 20-45. This final rule will reduce national emissions of hazardous air pollutants (including toluene, methanol, methyl chloride, and hydrochloric acid) by two thousand seven hundred fifty-five (2,755) tons per year (i.e., a reduction of approximately sixty-five percent (65%) from current levels). Affected facilities can choose to comply with this rule's requirements using either add-on control devices or pollution prevention alternatives to control emissions from process vents. Existing sources must comply by June 23, 2002. New or reconstructed sources are required to comply upon startup. The federal rule was effective on June 23, 1999.

Mineral wool production. On June 1, 1999, U.S. EPA promulgated national emission standards (64 FR 29489) for sources in mineral wool production facilities. This NESHAP is being presented under 326 IAC 20-46. Hazardous air pollutants emitted by the facilities covered by this rule include carbonyl sulfide, nine hazardous metals, formaldehyde, and phenol. U.S. EPA estimates that this final rule will reduce nationwide hazardous air pollutant emissions by fifty-one (51) tons per year. For existing sources, compliance with the emission limits must be demonstrated by June 1, 2002. For new and reconstructed sources, any control devices or monitoring equipment necessary to meet the emission limits must be installed upon startup. The federal rule was effective on June 1, 1999.

Wool fiberglass manufacturing. On June 14, 1999, U.S. EPA promulgated national emission standards (64 FR 31695) for sources in wool fiberglass manufacturing facilities. This NESHAP is being presented under 326 IAC 20-47. The hazardous air pollutants emitted by the facilities covered by this rule include compounds of three (3) metals: arsenic, chromium, and lead, and three (3) organic hazardous air pollutants: formaldehyde, phenol, and methanol. U.S. EPA estimates that the final rule will reduce nationwide emissions of hazardous air pollutants from these facilities by five hundred eighty (580) tons per year, a nearly thirty percent (30%) reduction from the current level of emissions. Existing sources must comply by June 14, 2002. New sources must demonstrate compliance with the standards at startup. The federal rule was effective on June 14, 1999.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with federal rules.

IDEM Contact

Additional information regarding this rulemaking action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Chrystal Amr, Rule Development Section, Office of Air Management, (or extension 4-1203) or dial (317) 234-1203.

with the branch campus. Therefore, we are revising § 602.2(b) to more clearly reflect the Department's long-standing policy.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely clarify statutory changes and do not establish or effect substantive policy. Therefore, under 5 U.S.C. 553(b)(8), the Secretary has determined that proposed regulations are unnecessary and contrary to public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small institutions of higher education (IHEs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small IHEs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

These final regulations do not contain any information collection requirements.

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(Catalog of Federal Domestic Assistance Numbers: 84.031S, 84.031A, and 84.031B)

List of Subjects in 34 CFR Part 606

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Dated: December 29, 2000.

A. Lee Fritschler

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends Title 34 of the Code of Federal Regulations by amending part 606 as follows:

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

1. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

2. Section 606.2 is amended by revising paragraph (b) to read as follows:

§ 606.2 What institutions are eligible to receive a grant under the Developing Hispanic-Serving Institutions Program?

* * * * *

(b) A branch campus of a Hispanic-Serving institution is eligible to receive a grant under this part if—

(1) The institution as a whole meets the requirements of paragraphs (a)(3) through (a)(6) of this section; and (2)

The branch campus satisfies the requirements of paragraphs (a)(1) through (a)(4) of this section.

* * * * *

[FR Doc. 01-430 Filed 1-5-01; 8:45 am]

BILLING CODE 4000-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6928-2]

RIN 2060-AH96

National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections and amendments.

SUMMARY: Under the Clean Air Act (CAA), the EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Off-Site Waste and Recovery Operations (OSWRO) on July 1, 1996 with subsequent amendments on July 20, 1999. The promulgated rule requires

new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology. The technical corrections and minor technical amendments in this action will not change the basic control requirements of the rule or the level of health protection it provides.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the OSWRO rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately. Because today's changes do not substantively change the requirements of the OSWRO rule, we find good cause to make these amendments effectively immediately.

EFFECTIVE DATE: January 8, 2001.

ADDRESSES: Docket No. A-92-16 contains the supporting information for the original OSWRO NESHAP and this action. The docket is located at the U.S. EPA in room M-1500, Waterside Mall (ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, Waste and Chemical Processes Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, NC, 27711, telephone number (919) 541-5499, facsimile number (919) 541-0246, electronic mail address manning.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action include the following types of facilities if the facility receives "off-site material" as defined in the rule, and the facility is determined to be a major source of emissions of HAP as defined in 40 CFR 63.2.

Category	Examples of regulated entities
Industry	Businesses that receive waste, used oil, or used solvent from off-site locations and manage this material in any of the following waste management or recovery operations: hazardous waste treatment, storage, and disposal facilities (TSDF); hazardous wastewater treatment operations exempted from air emission control requirements in 40 CFR parts 264 or 265; nonhazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery operations; recovery operations that recycle or reprocess hazardous waste and are exempted from regulation as a TSDF in 40 CFR parts 264 or 265; and used oil re-refineries.
Federal Government	Federal agency facilities that operate any of the waste management or recovery operations that meet the description of the entities listed under the "Industry" category in this table.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action.

A comprehensive list of Standard Industrial Classification (SIC) codes cannot be compiled for businesses potentially regulated by this action due to the structure of the rule. The rule may be applicable to any business that receives waste, used oil, or used solvent from an off-site location and then manages this material in one of the operations or processes specified in the rule. Thus, for many businesses subject to the rule, the regulated sources (*i.e.*, off-site waste management or recovery operations) are only a small part of the overall manufacturing process or service conducted at the facility. In these cases, the SIC code indicates the primary product produced or service provided at the facility rather than the presence of an off-site waste management or recovery operation at the site which is operated to support the predominate function of the facility. For example, SIC code classifications likely to have off-site waste management or recovery operations at some (but not all) facilities include, but are not limited to, petroleum refineries (SIC code 2911), industrial organic chemical manufacturing (SIC code 286x), plastic materials and synthetics manufacturing (SIC code 282x), and miscellaneous

chemical products manufacturing (SIC code 289x). The EPA is also aware of off-site waste management or recovery operations potentially subject to the rule being located at a few facilities listed under SIC codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable. Thus, the SIC code alone for a given facility does not determine whether the facility is or is not potentially subject to this rule.

To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.680 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document. *World Wide Web (WWW)*. The text of today's document will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

I. Background

The EPA, under 40 CFR part 63, subpart DD, promulgated the OSWRO

NESHAP on July 1, 1996 (61 FR 34140). The OSWRO NESHAP establish standards to control HAP emissions from certain waste management and recovery operations that are not subject to Federal air standards under other subparts in 40 CFR part 61 or 63. Subpart DD specifies the rule's applicability, standards for affected sources, compliance requirements, and reporting and recordkeeping provisions. In addition, subpart DD cross-references other subparts in 40 CFR part 63 for the specific air emissions control requirements to be used for affected tanks, surface impoundments, containers, individual drain systems, and oil-water and organic-water separators. The cross-referenced subparts are Subpart OO, National Emission Standards for Tanks, Level 1; Subpart PP, National Emission Standards for Containers; Subpart QQ, National Emission Standards for Surface Impoundments; Subpart RR, National Emission Standards for Individual Drain Systems; and Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators. Amendments were made to the final rule on July 20, 1999.

II. Summary of Corrections

Today's changes are described in Table 2 to this preamble for the convenience of the reader.

Table 2

Citation	Change
§ 63.681	Add definition "Off-site material service" to amendatory paragraph.
§ 63.684(b)(1)(ii)(A)&(B)	Add the letters "A" and "B" which were inadvertently left out of July 20, 1999 amendments.
§ 63.685(i) and (i)(4)	Add reference to (i)(4) in (i), intro paragraph, and add (i)(4), which was left out of July 1, 1996 final rule and the July 20, 1999 amendments.
§ 63.691(a)	In the July 20, 1999 amendments, § 63.683(b)(3) was eliminated and § 63.683(d) was added to take its place. The cite in § 63.691(a) referencing § 63.683 was not corrected in the July 1999 amendments to cite § 63.683(d). Today's action corrects this oversight.
§ 63.693(d)(3)(ii), (e)(3)(ii), (f)(3)(iii), and (g)(3)(ii).	The change to the rule removes the ± 1 percent accuracy requirement and replaces it with reference to part 60, appendix B, Performance Specification 8 or 9. The EPA received comments that the monitoring requirements in the rule were too vague, in that they did not define what type of monitoring device was acceptable, nor did it establish procedures for determining the accuracy requirement (± 1 percent) cited in the rule. The addition of part 60, appendix B, Performance Specification 8 or 9 to the rule will aid sources in choosing and certifying appropriate monitors, as well as establishing quality assurance procedures for maintaining, calibrating and auditing the monitors.

Citation	Change
§ 63.693 (d)(3), (d)(4)(i) and (iii)	This change adds another option to the carbon canister monitoring and replacement requirements consistent with those allowed under other related NESHAP and Resource Conservation and Recovery Act (RCRA) air rules.
§ 63.694(b)(2)(iii)	Correction to subscript of the "Q _T " term.
§ 63.694(1)(3)(ii)(A)	Correction to misprinted equation in July 1, 1996 final rule.
Table 2. Applicability of Paragraphs in Subpart A of Part 63—General Provisions to Subpart DD.	§ 63.10(b)(2)(xi) inadvertently left off table. The "yes" for this section was added.
§ 63.924(c)(2)	Change reference of § 63.692 to § 63.693. Section 63.692 is reserved.
§ 63.962(b)(3)(ii)	Corrected typographical error "in accordance."
§ 63.965(b)	Corrected typographical error "Standards."
§ 63.966	Corrected typographical error "Standards."
§ 63.1045	Corrected typographical error "Standards."

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an

agency does not use available and applicable voluntary consensus standards.

These final rule amendments provide technical corrections and minor technical amendments to the Off-Site Waste and Recovery Operations NESHAP (Subpart DD). These amendments include two technical standards: Performance Specification 8 (PS-8), Performance Specification for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources; and Performance Specification 9 (PS-9), Performance Specification for Gas Chromatograph Continuous Emission Monitoring Systems in Stationary Sources which are cited in § 63.693.

Consistent with the NTTAA, the EPA conducted a search for EPA's Performance Specifications 8 and 9. No candidate consensus standards were identified for either performance specification applicable for these amendments. Therefore, EPA is not proposing/adopting any voluntary consensus standards in this rulemaking. Nevertheless, under § 63.8, sources are allowed to apply to EPA for permission to use alternative monitoring in lieu of PS-8 and PS-9.

This technical correction action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these rule amendments, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these rule amendments in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These rule

amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 20, 1999 amendments to the final OSWRO rule.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 8, 2001. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Off-site waste and recovery operations.

Dated: December 27, 2000.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

2. Section 63.684 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 63.684 Standards: Off-site material treatment.

* * * * *

(b) * * *

(1) * * *

(ii) In the case when off-site material streams entering the treatment process are a mixture of off-site material streams having an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery with off-site material streams having average VOHAP concentrations less than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material must be reduced to a level at the point-of-treatment that meets the performance level specified in either paragraph (b)(1)(ii)(A) or (B) of this section.

(A) Less than the VOHAP concentration limit (C_R) established for the treatment process using the procedure specified in § 63.694(d); or

(B) Less than the lowest VOHAP concentration determined for each of the off-site material streams entering the treatment process as determined by the VOHAP concentration of the off-site material at the point-of-delivery.

* * * * *

3. Section 63.685 is amended by revising paragraph (i) introductory text and adding paragraph (i)(4) to read as follows:

§ 63.685 Standards: Tanks.

* * * * *

(i) The owner or operator who elects to control air emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (4) of this section.

* * * * *

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in § 63.693.

4. Section 63.691 is amended by revising paragraph (a) to read as follows:

§ 63.691 Standards: Equipment leaks.

(a) The provisions of this section apply to the control of air emissions from equipment leaks for which § 63.683(d) references the use of this section for such air emissions control.

* * * * *

5. Section 63.693 is amended by:

- a. Revising paragraphs (d)(3) introductory text and (d)(3)(ii);
- b. Revising paragraph (d)(4)(i);
- c. Adding paragraph (d)(4)(iii);
- d. Revising paragraph (e)(3)(ii);
- e. Revising paragraph (f)(3)(iii); and
- f. Revising paragraph (g)(3)(ii).

The revisions and addition read as follows:

§ 63.693 Standards: Closed-vent systems and control devices.

* * * * *

(d) * * *

(3) The owner or operator must monitor the operation of the carbon adsorption system in accordance with the requirements of § 63.695(e) using one of the continuous monitoring systems specified in paragraphs (d)(3)(i) through (iii) of this section. Monitoring the operation of a nonregenerable carbon adsorption system (*e.g.*, a carbon canister) using a continuous monitoring system is not required when the carbon canister or the carbon in the control device is replaced on a regular basis according to the requirements in paragraph (d)(4)(iii) of this section.

* * * * *

(ii) A continuous monitoring system to measure and record the daily average concentration level of organic compounds in the exhaust gas stream from the control device. The organic monitoring system must comply either with Performance Specification 8 or 9 in 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, Sections 2.4 and 3 need not be conducted.

* * * * *

(4) * * *

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system. The provisions of this paragraph (d)(4)(i) do not apply to a nonregenerable carbon adsorption system (*e.g.*, a carbon canister) for which the carbon canister or the carbon in the control device is replaced on a regular basis according to the requirements in paragraph (d)(4)(iii) of this section.

* * * * *

(iii) As an alternative to meeting the requirements in paragraphs (d)(3) and

(d)(4)(i) of this section, an owner or operator of a nonregenerable carbon adsorption system may choose to replace on a regular basis the carbon canister or the carbon in the control device using the procedures in either paragraph (d)(4)(iii)(A) or (d)(4)(iii)(B) of this section. For the purpose of complying with this paragraph (d)(4)(iii), a nonregenerable carbon adsorption system means a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device, such as a carbon canister. The spent carbon removed from the nonregenerable carbon adsorption system must be managed according to the requirements in paragraph (d)(4)(ii) of this section.

(A) Monitor the concentration level of the organic compounds in the exhaust vent from the carbon adsorption system on a regular schedule, and when carbon breakthrough is indicated, immediately replace either the existing carbon canister with a new carbon canister or replace the existing carbon in the control device with fresh carbon. Measurement of the concentration level of the organic compounds in the exhaust vent stream must be made with a detection instrument that is appropriate for the composition of organic constituents in the vent stream and is routinely calibrated to measure the organic concentration level expected to occur at breakthrough. The monitoring frequency must be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of paragraph (d)(2)(ii)(B) of this section, whichever is longer.

(B) Replace either the existing carbon canister with a new carbon canister or replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of paragraph (d)(2)(ii)(B) of this section.

(e) * * *

(3) * * *

(ii) A continuous monitoring system to measure and record the daily average concentration level of organic compounds in the exhaust gas stream from the control device. The organic monitoring system must comply either with Performance Specification 8 or 9 in 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, Sections 2.4 and 3 need not be conducted.

* * * * *

(f) * * *

(3) * * *

(iii) For either type of vapor incinerator, a continuous monitoring system to measure and record the daily average concentration of organic compounds in the exhaust vent stream from the control device. The organic monitoring system must comply either with Performance Specification 8 or 9 in 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, Sections 2.4 and 3 need not be conducted.

* * * * *

(g) * * *

(3) * * *

(ii) A continuous monitoring system to measure and record the daily average concentration of organic compounds in the exhaust vent stream from the control device. The organic monitoring system must comply either with Performance Specification 8 or 9 in 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, Sections 2.4 and 3 need not be conducted.

* * * * *

6. Section 63.694 is amended by revising paragraphs (b)(2)(iii) and (l)(3)(ii)(A) to read as follows:

§ 63.694 Testing methods and procedures.

* * * * *

(b) * * *

(2) * * *

(iii) *Calculations.* The average VOHAP concentration (C) on a mass-weighted basis shall be calculated by

using the results for all samples analyzed in accordance with paragraph (b)(2)(ii) of this section and the following equation. An owner or operator using a test method that provides species-specific chemical concentrations may adjust the measured concentrations to the corresponding concentration values which would be obtained had the off-site material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the off-site material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

$$C = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

C = Average VOHAP concentration of the off-site material at the point-of-delivery on a mass-weighted basis, ppmw.

i = Individual sample "i" of the off-site material.

n = Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of off-site material stream represented by C_i , kg/hr.

Q_T = Total mass quantity of off-site material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.694(a), ppmw.

* * * * *

(l) * * *

(3) * * *

(ii) * * *

(A) The following equations shall be used:

$$E_i = K_2 \times Q_i \times \sum_{j=1}^n (C_{ij} \times M_{ij})$$

$$E_o = K_2 \times Q_o \times \sum_{j=1}^n (C_{oj} \times M_{oj})$$

Where:

C_{ij} , C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i , E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij} , M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i , Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)⁻¹ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

* * * * *

7. In Table 2 of Subpart DD, the entry "63.10(b)(2)(x)" is revised to read as follows:

TABLE 2 TO SUBPART DD—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A	Applies to Subpart DD	Explanation
* * *	* * *	* * *
63.10(b)(2)(x)–(xi)	Yes.	
* * *	* * *	* * *

Subpart PP—National Emission Standards for Containers

8. Section 63.924 is amended by revising paragraph (c)(2) to read as follows:

§ 63.924 Standards—Container Level 3 Controls.

* * * * *

(c) * * *

(2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693.

* * * * *

Subpart RR—National Emission Standards for Individual Drain Systems

9. Section 63.962 is amended by revising paragraph (b)(3)(ii)(A) to read as follows:

§ 63.962 Standards.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) The junction box shall be vented through a closed vent system to a control device except as provided for in paragraph (b)(3)(ii)(B) of this section. The closed vent system and control device shall be designed and operated

in accordance with the standards specified in § 63.693.

* * * * *

10. Section 63.965 is amended by revising paragraph (b) to read as follows:

§ 63.965 Recordkeeping requirements.

* * * * *

(b) Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962 shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693.

11. Section 63.966 is revised to read as follows:

§ 63.966 Reporting requirements.

Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962 shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693.

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

12. Section 63.1045 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 63.1045 Standards—Pressurized separator.

* * * * *

(b) * * *

(3) * * *

(ii) At those times when purging of inerts from the separator is required, and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the applicable requirements of § 63.693.

[FR Doc. 01–365 Filed 1–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[NV 032–FON; FRL–6927–7]

Clean Air Act Reclassification; Nevada—Reno Planning Area; Particulate Matter of 10 Microns or Less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that the Reno (Washoe County) Planning Area (RPA) has not attained the annual and 24-hour PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1994. This finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–1994. As a result of this failure to attain, the RPA will be reclassified under CAA section 188(b)(2) by operation of law as a serious nonattainment area on the effective date of this rule. The State of Nevada will be required to submit a state implementation plan (SIP) revision addressing the CAA provisions for serious areas within 18 months of the reclassification.

EFFECTIVE DATE: This action is effective on February 7, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region 9 office during normal business hours. U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

FOR FURTHER INFORMATION CONTACT: For monitoring data questions contact Manny Aquitania, U.S. EPA, Region 9, Air Division, Technical Support Office (AIR–7), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1299, aquitania.manny@epa.gov. For other questions contact Doris Lo, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 22, 2000, EPA proposed to find that the RPA, a moderate PM–10 nonattainment area (40 CFR 81.329) did not attain either the 24-hour or annual PM–10 NAAQS by the required attainment date of December 31, 1994 and, as a result, would be reclassified as a serious area. 65 FR 70326. The proposed finding and resulting reclassification is based on air quality data which revealed violations of the PM–10 NAAQS during 1992–1994. For more background information see the November 22, 2000 proposal at 65 FR 70326. Today's rulemaking provides EPA's responses to public comments and finalizes EPA's proposed action.

II. Public Comments and EPA Responses

In response to the November 22, 2000 proposal, EPA received one comment letter from the Washoe County District Health Department Air Quality Management Division (the District). In general, the District believes that the air quality in the RPA has improved over the past decade and that a reclassification to serious is not indicative of the air quality improvement for the area; however, the District also recognizes that EPA proposed to reclassify the RPA pursuant to the Clean Air Act's statutory requirements. Below are EPA's responses to the District's comments.

Comment 1: The District is concerned that after years of improving PM–10 ambient levels and public outreach efforts promoting their successes, the proposed action will bring into question the credibility of both the District and EPA. Moreover, the District believes that the reclassification of the area to serious nonattainment will require considerable staff resources to be spent on plan preparation and documentation requirements.

In addition, the District does not believe that the serious classification correctly defines the current PM–10 status of the RPA and that maintaining the moderate classification, although it may not be an option provided by the Clean Air Act, would more correctly characterize the area.

Response 1: While the PM–10 ambient levels may have improved over the years, the RPA was violating the PM–10 standard on its CAA attainment deadline of December 31, 1994 and is currently still in violation of the PM–10 standard. The basis for this conclusion and the data supporting it are discussed in detail in the proposed rule. See 65 FR at 70327.

EPA has the responsibility under CAA sections 179(c) and 188(b)(2) to make findings of failure to attain for areas which have not attained the NAAQS by the statutory deadline. Under section 188(b)(2)(A), a moderate PM–10 nonattainment area is reclassified as serious by operation of law if the Administrator finds that the area has failed to attain the NAAQS by the statutory attainment date.

EPA supports the District's efforts to improve the air quality in the Reno area and understands that the District has already spent considerable resources in developing measures that will satisfy the requirements in CAA section 189(b) for a serious PM–10 area. EPA understands that the plan preparation and document requirements can be resource-intensive and difficult, but EPA is encouraged by the District's ongoing efforts and believes that the District's past efforts (e.g., residential wood burning and construction dust control measures) will also help address the serious area planning requirements. These ongoing and past efforts should help the serious area plan preparation and documentation requirements proceed with fewer resources and less difficulty.

Comment 2: The District stated that the lawsuit and accompanying arguments levied by the Sierra Club present the perception that the air quality in the RPA has continually been at a level endangering public health. The District believes this is a

SECTION 8 NESHAPS

Bold and single underline = new language since preliminary adoption

~~Bold, strikeout, and single underline~~ = new language added at preliminary adoption and proposed for deletion at final adoption

~~Roman, strikeout, and single underline~~ = existing language proposed for deletion at final adoption

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED AND PROPOSED FOR FINAL ADOPTION WITH SUGGESTED CHANGES

LSA Document #00-184

DIGEST

Adds 326 IAC 20-30-1, 326 IAC 20-31-1, and 326 IAC 20-32-1, national emission standards for hazardous air pollutants for oil and natural gas production; natural gas transmission and storage; and publicly owned treatment works. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of Commissioner pursuant to IC 13-14-9-8 and Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3217).

Date of First Hearing: October 4, 2000.

Proposed Rule and Notice of Second Hearing: November 1, 2000, Indiana Register (24 IR 449).

Date of Second Hearing: February 7, 2001.

326 IAC 20-30

326 IAC 20-31

326 IAC 20-32

SECTION 1. 326 IAC 20-30 IS ADDED TO READ AS FOLLOWS:

Rule 30. Oil and Natural Gas Production

326 IAC 20-30-1 Oil and natural gas production; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners and operators of emission points that are located at oil and natural gas production facilities as provided in 40 CFR 63.760, 64 FR 32628 (June 17, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HH, 64 FR 32628 (June 17, 1999)*, national emission standards for hazardous air pollutants from oil and natural gas production facilities.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-30-1)**

SECTION 2. 326 IAC 20-31 IS ADDED TO READ AS FOLLOWS:

Rule 31. Natural Gas Transmission and Storage

326 IAC 20-31-1 Natural gas transmission and storage; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners and operators of natural gas transmission and storage facilities as provided in 40 CFR 63.1270, 64 FR 32648 (June 17, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHH, 64 FR 32648 (June 17, 1999)*, national emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis,**

Indiana. (*Air Pollution Control Board; 326 IAC 20-31-1*)

SECTION 3. 326 IAC 20-32 IS ADDED TO READ AS FOLLOWS:

Rule 32. Publicly Owned Treatment Works

326 IAC 20-32-1 Publicly owned treatment works; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of publicly owned treatment works as provided in 40 CFR 63.1580, 64 FR 57572 (October 26, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VVV, 64 FR 57572 (October 26, 1999), national emission standards for hazardous air pollutants: publicly owned treatment works.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and or are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-32-1)**

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED

LSA Document #00-184

DIGEST

Adds 326 IAC 20-30, 326 IAC 20-31, and 326 IAC 20-32 concerning national emission standards for hazardous air pollutants for oil and natural gas production, natural gas transmission and storage, and publicly owned treatment works. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of Commissioner pursuant to IC 13-14-9-8 and Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3217).

Date of First Hearing: October 4, 2000.

326 IAC 20-30

326 IAC 20-31

326 IAC 20-32

SECTION 1. 326 IAC 20-30 IS ADDED TO READ AS FOLLOWS:

Rule 30. Oil and Natural Gas Production

326 IAC 20-30-1 Oil and natural gas production; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners and operators of emission points that are located at oil and natural gas production facilities as provided in 40 CFR 63.760, 64 FR 32628 (June 17, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HH, 64 FR 32628 (June 17, 1999)*, national emission standards for hazardous air pollutants from oil and natural gas production facilities.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-30-1*)**

SECTION 2. 326 IAC 20-31 IS ADDED TO READ AS FOLLOWS:

Rule 31. Natural Gas Transmission and Storage

326 IAC 20-31-1 Natural gas transmission and storage; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to owners and operators of natural gas transmission and storage facilities as provided in 40 CFR 63.1270, 64 FR 32648 (June 17, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHH, 64 FR 32648 (June 17, 1999)*, national emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-31-1*)**

SECTION 3. 326 IAC 20-32 IS ADDED TO READ AS FOLLOWS:

Rule 32. Publicly Owned Treatment Works

326 IAC 20-32-1 Publicly owned treatment works; applicability; incorporation by reference of federal standards

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of publicly owned treatment works as

provided in 40 CFR 63.1580, 64 FR 57572 (October 26, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VVV, 64 FR 57572 (October 26, 1999), national emission standards for hazardous air pollutants: publicly owned treatment works.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-32-1*)

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-184

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC
HEARING**

On October 4, 2000, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules 326 IAC 20-30, 326 IAC 20-31, and 326 IAC 20-32. No comments were made at the first hearing.



Indiana Department of Environmental Management
Office of Air Management
Rule Fact Sheet
October 4, 2000

**DEVELOPMENT OF NEW RULES CONCERNING THE INCORPORATION OF
NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR OIL
AND NATURAL GAS PRODUCTION; NATURAL GAS TRANSMISSION AND
STORAGE; AND PUBLICLY OWNED TREATMENT WORKS
#00-184(APCB)**

Overview

This rulemaking incorporates by reference national emission standards for hazardous air pollutants for oil and natural gas production under 40 CFR 63, Subpart HH, 64 FR 32628, June 17, 1999; natural gas transmission and storage under 40 CFR 63, Subpart HHH, 64 FR 32648, June 17, 1999; and publicly owned treatment works under 40 CFR 63, Subpart VVV, 64 FR 57572, October 26, 1999.

Citations Affected

Adds: 326 IAC 20-30
326 IAC 20-31
326 IAC 20-32

Affected Persons

This rulemaking affects major sources in oil and natural gas production and in natural gas transmission and storage. Examples of potentially regulated entities in these categories include condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities. At this time, there are no known sources in Indiana.

This rulemaking also affects large publicly owned treatment works built or substantially reconstructed after December 1, 1998.

Examples of potentially regulated entities in this category include large sewage treatment facilities, municipal wastewater treatment facilities, and publicly owned treatment works. At this time, IDEM is not aware of any facilities in Indiana built or reconstructed after December 1, 1998 that would be subject to this rule. The applicability standards in the rule, as well as Indiana's limits on industrial discharges to wastewater treatment plants, will limit the applicability of this rule to the construction or reconstruction of only the largest publicly owned treatment works, such as those in Indiana's largest urban areas. Such projects will require federal funding and oversight to implement, at which time an applicability determination will be required.

Potential Cost

There is no additional cost associated with this rulemaking above and beyond the costs associated with the federal rule, which is already in effect.

Outreach

IDEM mailed draft rule language regarding publicly owned treatment works to interested parties.

Description

Oil and Natural Gas Production; Natural Gas Transmission and Storage

On June 17, 1999 (64 FR 32610), U.S. EPA adopted final rules under Subparts HH and HHH regulating hazardous air pollutant emissions from new and existing oil and natural gas production facilities (Subpart HH), and natural gas transmission and storage facilities (Subpart HHH). U.S. EPA estimates that approximately sixty-nine thousand (69,000) megagrams, or sixty-seven thousand nine hundred thirteen (67,913) tons per year of hazardous air pollutants are emitted from facilities in these source categories. The primary hazardous air pollutants emitted by the facilities covered by the final standards include benzene, toluene, ethyl benzene, mixed xylenes, and n-hexane. U.S. EPA estimates that these rules will reduce hazardous air pollutant emissions from major sources in the oil and natural gas production source category by seventy-seven percent (77%) and from major sources in the natural gas transmission and storage source category by ninety-five percent (95%). No major sources have been identified in Indiana.

Subpart HH establishes equipment leak standards and controls for specific emission points of affected sources in the oil and natural gas production category. Subpart HHH requires emission controls at process vents at certain size glycol dehydration units with some exemptions for affected sources in the natural gas transport and storage category. Both Subparts HH and HHH require continuous parameter monitoring controls, and record keeping and reporting.

Publicly Owned Treatment Works

On October 26, 1999 (64 FR 57572), U.S. EPA adopted final rules under Subpart VVV to regulate emissions of hazardous air pollutants from new and existing publicly owned treatment works (POTW). With this final rule, U.S. EPA

requires air pollution controls on a new or reconstructed treatment plant at a POTW (industrial and non-industrial) that is a major source of hazardous air pollutants. The primary hazardous air pollutants emitted from sources in this category vary among individual facilities. Typical hazardous air pollutants that may be emitted from a facility include xylenes, methylene chloride, toluene, ethylbenzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

This rule will reduce hazardous air pollutant emissions from new or reconstructed publicly owned treatment works which are major sources of air emissions. At this time IDEM has not identified any applicable sources.

A new or reconstructed industrial publicly owned treatment works must comply with the non-industrial standards, or with the treatment standards for all appropriate industrial NESHAP, whichever is more stringent.

A new or reconstructed non-industrial publicly owned treatment works is required to either include air pollution controls on certain wastewater treatment units, or demonstrate that pollution prevention has produced an equivalent emission reduction.

The rule requires certain specific control measures. The publicly owned treatment works must use covers and controls on the primary treatment units or show compliance by calculating a fraction emitted value equivalent to using covers and controls on primary treatment units. To comply with the cover and control option of this rule, U.S. EPA is requiring continuous monitoring of the operation of the control devices. U.S. EPA is also requiring that the publicly owned treatment works develop a monitoring program which will demonstrate continuous compliance.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting

rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new rules are consistent with federal rules.

IDEM Contact

Additional information regarding this rulemaking action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Chrystal Amr, Rule Development Section, Office of Air Management, (or extension 4-1203) or dial (317) 234-1203.

PORTLAND CEMENT
NESHAP

Bold and single underline = new language since preliminary adoption

~~Bold, strikeout, and single underline~~ = new language added at preliminary adoption and proposed for deletion at final adoption

~~Roman, strikeout, and single underline~~ = existing language proposed for deletion at final adoption

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED AND PROPOSED FOR FINAL ADOPTION WITH SUGGESTED CHANGES

LSA Document #00-71

DIGEST

Adds 326 IAC 20-27-1, national emission standards for hazardous air pollutants for each new and existing portland cement plant. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1739).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2000, Indiana Register (23 IR 2609).

Notice of Change in First Hearing: September 1, 2000, Indiana Register (23 IR 3097).

Date of First Hearing: September 6, 2000.

Proposed Rule and Notice of Second Hearing: October 1, 2000, Indiana Register (24 IR 112).

Notice of Change in Second Hearing: February 1, 2001, Indiana Register (XX IR XXXX).

Date of Second Hearing: February 7, 2001.

326 IAC 20-27

SECTION 1. 326 IAC 20-27 IS ADDED TO READ AS FOLLOWS:

Rule 27. Portland Cement Manufacturing Industry

**326 IAC 20-27-1 Portland cement manufacturing industry; applicability; incorporation
by reference of federal standards**

Authority: IC 13-14-8; IC 13-17-3-11; IC 13-17-3-4
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to each new and existing portland cement plant as provided in 40 CFR 63.1340, 64 FR 31898 (June 14, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart LLL, 64 FR 31898 (June 14, 1999)* and 64 FR 53070 (September 30, 1999)*, National Emission Standards for Portland Cement Manufacturing Industry.

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 or and are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-27-1*)

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED

LSA Document #00-71

DIGEST

Adds 326 IAC 20-27-1 concerning national emission standards for hazardous air pollutants for each new and existing portland cement plant. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1739).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2000, Indiana Register (23 IR 2609).

Notice of Change in First Hearing: September 1, 2000, Indiana Register (23 IR 3097).

Date of First Hearing: September 6, 2000.

326 IAC 20-27

SECTION 1. 326 IAC 20-27 IS ADDED TO READ AS FOLLOWS:

Rule 27. Portland Cement Manufacturing Industry

326 IAC 20-27-1 Portland cement manufacturing industry; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-11; IC 13-17-3-4

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to each new and existing portland cement plant as provided in 40 CFR 63.1340, 64 FR 31898 (June 14, 1999)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart LLL, 64 FR 31898 (June 14, 1999)* and 64 FR 53070 (September 30, 1999)*, National Emission Standards for Portland Cement Manufacturing Industry.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR)**

referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-27-1*)



Indiana Department of Environmental Management
Office of Air Management
Rule Fact Sheet
September 6, 2000

**DEVELOPMENT OF NEW RULES CONCERNING THE INCORPORATION OF
NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR
PORTLAND CEMENT MANUFACTURING INDUSTRY
#00-71(APCB)**

Overview

This rulemaking incorporates by reference national emission standards for hazardous air pollutants for portland cement manufacturing industry under 40 CFR 63, Subpart LLL, 64 FR 31898, June 14, 1999, and applies to each portland cement manufacturing plant at any facility which is a major source or an area source, with the exception of portland cement kilns and in-line kiln or raw mills subject to 40 CFR 63, Subpart EEE.

Citations Affected

Adds: 326 IAC 20-27-1

Affected Persons

This rule affects each portland cement manufacturing plant that is a major or an area source. Cement kilns that combust municipal solid waste, medical waste or other material (other than hazardous waste) are subject to this rule. There are four sources in Indiana subject to this rule. This rule affects the community in the vicinity of each portland cement plant subject to the rule.

Potential Cost

The potential cost of this rulemaking is expected to be low, since affected sources are already subject to federal rule.

Outreach

IDEM mailed the first and second notices requesting comments regarding this rulemaking to affected sources and interested parties.

Description

On June 14, 1999, U.S. EPA published a final rule for the portland cement manufacturing industry under 40 CFR 63, Subpart LLL (64 FR 31898). This NESHAP applies to portland cement manufacturing plants that are major or area sources. Major sources are sources that emit or have the potential to emit at least ten (10) tons per year of any hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants. Area sources are stationary sources of hazardous air pollutants that are not major sources. Additionally, major sources are subject to Title V permitting requirements. Cement kilns that combust municipal solid waste, medical waste or other material (other than hazardous waste) are subject to this rule. The rule covers the kiln and raw material dryer at major and area sources. The rule also covers the clinker cooler, raw mill, finish mill, material bins, conveying system transfer point, bagging system, and bulk loading or unloading system. Kilns that fire hazardous wastes are subject to Subpart EEE, national emission standard for

hazardous air pollutants for hazardous waste combustors, and are not subject to the kiln emission limits under Subpart LLL.

The rule contains emission limits for certain hazardous air pollutants, performance testing requirements, maintenance requirements for control devices, monitoring, recordkeeping, and reporting. Kilns and other processes at major sources have emission limits for particulate matter and opacity. Although area sources are not subject to the particulate matter and opacity emission limits in this NESHAP, they are subject to similar particulate matter and opacity emission limits under the new source performance standards for portland cement plants (40 CFR 60, Subpart F). The new source performance standards apply to units that were constructed or modified after August 17, 1971. Particulate matter is controlled by fabric filter or electrostatic precipitator, the same control already required by the new source performance standards. The federal rule was developed under Section 112 of the Clean Air Act, which has no statutory requirement for regulation of individual hazardous air pollutant metals. The particulate matter limit serves as a surrogate limit for the non-volatile and semi-volatile hazardous air pollutant metals.

Dioxin/furan limits are also required for all sources. Dioxin/furan emissions are controlled by temperature control at the inlet particulate matter control device. New kilns located at a greenfield site are subject to a hydrocarbon limit. New kilns at existing sites are not subject to the hydrocarbon limit. The technology used to meet this hydrocarbon limit, which consists of site selection of feed material with low levels of naturally occurring organic material, is cost prohibitive for existing facilities.

Monitoring requirements include particulate matter continuous emissions monitoring systems. However, since U.S. EPA has not finalized the performance specification for the

use of particulate matter continuous emissions monitoring systems at cement kilns or resolved technical issues, the effective date of the requirement to install and operate these monitoring systems has been deferred. Until the particulate matter continuous emissions monitoring systems requirements are promulgated, there are requirements for an initial particulate matter continuous emissions monitoring systems performance test and testing every five (5) years thereafter, plus opacity monitoring. There is also a requirement for an initial performance test for dioxin/furans and testing every thirty (30) months thereafter. The rule includes a requirement for inspection of the combustion system components of kilns, an energy reduction measure.

U.S. EPA has estimated that annual emissions of particulate matter will be reduced nationally by five thousand two hundred (5,200) tons, a twenty-four percent (24%) reduction for existing portland cement plants. Hazardous air pollutant metals from existing sources will be reduced by thirty-eight (38) tons, or twenty-five percent (25%), annually and dioxin/furan emissions by thirty-three thousandths (0.033) pounds, or thirty-six percent (36%), annually. Particulate matter emissions reductions in Indiana will depend on how many of the existing sources are already subject to the new source performance standards for portland cement plants. There may be additional particulate matter emissions reductions when the particulate matter continuous emissions monitoring systems requirement is promulgated since there will be continuous monitoring instead of periodic stack testing, which may lead to more consistent compliance with the new limits.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new rules are consistent with federal rules.

IDEM Contact

Additional information regarding this rulemaking action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Chrystal Amr, Rule Development Section, Office of Air Management, (or extension 4-1203) or dial (317) 234-1203.

HAZARDOUS WASTE COMBUSTOR
NESHAP

Bold and single underline = new language since preliminary adoption

~~Bold, strikeout, and single underline~~ = new language added at preliminary adoption and proposed for deletion at final adoption

~~Roman, strikeout, and single underline~~ = existing language proposed for deletion at final adoption

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED AND PROPOSED FOR FINAL ADOPTION WITH SUGGESTED CHANGES

LSA Document #00-70

DIGEST

Adds 326 IAC 20-28-1, national emission standards for hazardous air pollutants for hazardous waste combustors. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1738).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2000, Indiana Register (23 IR 2607).

Notice of Change in First Hearing: September 1, 2000, Indiana Register (23 IR 3096).

Date of First Hearing: September 6, 2000.

Proposed Rule and Notice of Second Hearing: October 1, 2000, Indiana Register (24 IR 111).

Notice of Change in Second Hearing: February 1, 2001, Indiana Register (XX IR XXXX).

Date of Second Hearing: February 7, 2001.

326 IAC 20-28

SECTION 1. 326 IAC 20-28 IS ADDED TO READ AS FOLLOWS:

Rule 28. Hazardous Waste Combustors

326 IAC 20-28-1 Hazardous waste combustors; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-11; IC 13-17-3-4
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to all hazardous waste combustors as provided in 40 CFR 63.1200, 64 FR 52828 (September 30, 1999)*, including the following:

- (1) Hazardous waste incinerators.**
- (2) Hazardous waste-burning cement kilns.**
- (3) Hazardous waste-burning lightweight aggregate kilns.**

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart EEE, 64 FR 52828 (September 30, 1999)*, 64 FR 63209 (November 19, 1999)*, and 65 FR 42292 (July 10, 2000), and 65 FR 67268 (November 9, 2000)*, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, with the exception of the following sections:

- (1) 63.1206(a)(2), concerning sources that do not intend to comply.**
- (2) 63.1210(b), concerning notification of intent to comply.**
- (3) 63.1210(c), concerning public meeting and notice of intent to comply.**
- (4) 63.1211(b), concerning compliance progress reports associated with the notification of intent to comply.**
- (5) 63.1212(a), concerning certification of intent to comply.**
- (6) 63.1212(b), concerning sources that begin burning hazardous waste after September 30, 1999.**

***These documents are incorporated by reference. Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule** may be obtained from the Government Printing Office, Washington, D.C. 20402 or and are available for copying at the Indiana Department of Environmental Management, Office of Air Management Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-28-1*)

TITLE 326 AIR POLLUTION CONTROL BOARD

RULE AS PRELIMINARILY ADOPTED

LSA Document #00-70

DIGEST

Adds 326 IAC 20-28-1 concerning national emission standards for hazardous air pollutants for hazardous waste combustors. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2000, Indiana Register (23 IR 1738).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2000, Indiana Register (23 IR 2607).

Notice of Change in Public Hearing: September 1, 2000, Indiana Register (23 IR 3096).

Date of First Hearing: September 6, 2000.

326 IAC 20-28

SECTION 1. 326 IAC 20-28 IS ADDED TO READ AS FOLLOWS:

Rule 28. Hazardous Waste Combustors

326 IAC 20-28-1 Hazardous waste combustors; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-11; IC 13-17-3-4

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to all hazardous waste combustors as provided in 40 CFR 63.1200, 64 FR 52828 (September 30, 1999)*, including the following:

- (1) Hazardous waste incinerators.**
- (2) Hazardous waste-burning cement kilns.**
- (3) Hazardous waste-burning lightweight aggregate kilns.**

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart EEE, 64 FR 52828 (September 30, 1999)*, 64 FR 63209 (November 19, 1999)* and 65 FR 42292

(July 10, 2000)*, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

***Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana. (*Air Pollution Control Board; 326 IAC 20-28-1*)**

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-70

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC
HEARING**

On September 6, 2000, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rule 326 IAC 20-28. No comments were made at the first hearing.

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 63**

[FRL-6898-8]

RIN 2050-AE01

**NESHAPS: Final Standards for
Hazardous Air Pollutants for
Hazardous Waste Combustors; Final
Rule—Interpretive Clarification;
Technical Correction****AGENCY:** Environmental Protection
Agency (EPA, the Agency).**ACTION:** Final rule; Interpretive
Clarification and Technical Correction.

SUMMARY: On September 30, 1999 (64 FR 52828), EPA issued a final rule promulgating revised standards for hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These standards were promulgated under joint authority of the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). Sources subject to these standards have raised questions regarding the applicability of new source versus existing source standards for hazardous waste incinerators. In part one of today's rule, we clarify the original intent of our rule on these issues. In part two of today's rule, we make three technical corrections.

DATES: This rule is effective on November 9, 2000.

ADDRESSES: You may view the docket for this rulemaking at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You should ask for docket number F-2000-RF3C-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, contact the RCRA Hotline Monday through Friday between 9 a.m. and 6 p.m. EST, toll free at (800) 424-9346; or (703) 412-9810 from Government phones or if in the Washington, DC local calling area; or (800) 553-7672 for the hearing impaired. For information on this rule contact David Hockey (5302W), Office of Solid Waste, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at hockey.david@epa.gov, or at telephone number 703-308-8846.

SUPPLEMENTARY INFORMATION:**Table of Contents**

Part One: Clarifications

- I. What Is the Purpose of This Section?
- II. What is the Scope of the Definition of Hazardous Waste Incinerator?
- III. Clarification of "Reconstructed Sources"

Part Two: Technical Corrections

- I. What Is the Purpose of This Section?
- II. The Deadline for Conducting the Subsequent Comprehensive Performance Test After Using Data in Lieu of the Initial Performance Test is Corrected
- III. The Confusion between Continuous Monitoring System Evaluation Plan and Evaluation Test Plan is Corrected
- IV. Procedures to Begin Calculating Continuous Monitoring System Rolling Averages is Corrected for Sources That Comply Early

Part Three: Good Cause Exemption

Part Four: How is the Program Delegated Under the Clean Air Act?

Part Five: Analytic and Regulatory Requirements

Part one: Clarifications*I. What Is the Purpose of This Section?*

EPA promulgated emission standards for hazardous waste-burning incinerators, lightweight aggregate kilns and cement kilns on September 30, 1999. 64 FR 52828. These standards implement section 112(d) of the Clean Air Act and reflect the performance of the Maximum Available Control Technology (or MACT). The standards themselves are normally called National Emission Standards for Hazardous Air Pollutants (NESHAP).

The Hazardous Waste Combustor (HWC) NESHAP contains two sets of emission standards: One set for existing sources and a second, generally more stringent, set for new sources. Several incinerators subject to this NESHAP have requested clarification as to the applicability of new versus existing source standards in situations when existing incinerators are modified to comply with the emission standards. Specifically, these incinerators have requested clarification on two issues that affect the applicability of new versus existing source standards. First, incinerator commenters want to know if an incinerator's air pollution control device is considered to be part of the "affected source" for purposes of this rule. Second, these commenters want to know if the costs of replacement or retrofitting of air pollution control equipment, installed to comply with the HWC NESHAP (incurred between the proposal and source's compliance date), are to be considered as "reconstruction" costs in determining if new source standards apply.

After receiving these comments, we further studied the regulatory text and

determined that the definitions are either ambiguous or contain (unintended) gaps on several points. In this rule, therefore, we set out our interpretation of these provisions and add clarifying language to the rules to remove ambiguity or gaps and to better express our original intent. We note further, that these interpretations apply to this NESHAP alone and so have no precedential value for interpreting any other NESHAP or any other Clean Air Act regulation.

II. What Is the Scope of the Definition of Hazardous Waste Incinerator?

The HWC MACT standards apply to, among other sources, "hazardous waste incinerators." These are defined at 40 CFR 260.10, as (for purposes relevant here) "any enclosed device that [u]ses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace." This definition does not explicitly address whether air pollution control equipment and other hazardous waste burning equipment, e.g., the waste firing system, is considered to be part of the incinerator.

The relationship of this definition to the question of new source standard applicability is that, as provided in § 63.1206(a)(3), "if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996", the source is subject to the new source standards. If pollution control equipment is part of the incinerator, then an incinerator that began retrofitting pollution control equipment before April 19, 1996 ordinarily would not be subject to the new source standards. Conversely, if only the combustion chamber is considered to be the source, then only changes to the combustion chamber begun before April 19, 1996 would be relevant in assessing new source standard applicability.

As described by commenters, the definition of an incinerator at 40 CFR 260.10 is unclear with regard to whether the "enclosed device" includes the air pollution control device (APCD). In one instance, the enclosed device can be interpreted to include only the burn chamber, typically either a box or cylindrical configuration, into which waste is fed and burned using controlled flame combustion. However, the definition also can be read to include not only the burn chamber, but also to include other parts of the device through which combustion off-gases, that can contain significant concentrations of hazardous air

pollutants (HAPs), flow prior to release to the environment. These APCDs, of course, are also enclosed and so are part of the device preventing release of HAPs until the end of the combustion process. These gases continue to be regulated, as is the APCD itself.

In promulgating the HWC NESHAP rule, we intended that the incinerator source include not only the combustion chamber, but also the waste firing system and the APCD. The commercial purpose of an HWC is the safe treatment (destruction) of hazardous organic pollutants. In order to provide safe treatment, other HAPs may require capture, additional treatment, and disposal. For hazardous waste incinerators, we regulate, through specific operating conditions and monitoring requirements, all aspects of the source that may affect emissions of HAPs from the burning of hazardous wastes. See 64 FR at 53055–53062. Because the APCD affects emissions of HAPs, e.g., dioxin/furan formation, toxic metals capture, acid gas removal, we consider the APCD integral to the treatment process, and, therefore, to the source as a whole. For example, when describing the applicability of requirements in response to comments, we say that requirements apply to “* * * all components of the combustor, including associated pollution control equipment.” US EPA, *Response to Comments Background Document, Volume II: Compliance, PM Control (PMCOMP.WPD)*, page 6.

We acknowledge that this intent should have been expressed in the definition of an incinerator. Therefore, we make our intent explicit by adding the following clarification to the rule: To the definition of a hazardous waste incinerator in § 63.1201(a) we add the following sentence: “For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.”

Most importantly, this interpretation maintains the status quo in defining new source incinerators. In implementing the RCRA subtitle C rules, we included air pollution controls as part of the incinerator. This is important in that section 112(n)(7) of the CAA calls for integration of the standards under both RCRA and CAA programs to the extent practicable (consistent with the requirements of section 112). In this case, it is “practicable,” in the words of section 112(n)(7), to carry over this RCRA practice into implementation of the MACT standard. We are therefore doing so here. However, we note that due to

this need to link with the RCRA subtitle C program, this action creates no precedent for any other CAA source category.

III. Clarification of “Reconstructed Sources”

Section 63.1206(a)(3), as promulgated, states that “if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with (the new source standards).” “Reconstruction,” in turn, is defined in the General Provisions (in relevant part) as “the replacement of components of an affected * * * source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital costs that would be required to construct a comparable new source.” Section 63.2 (definition of “reconstruction”). In adopting § 63.1206(a)(3), we intended that the cost of retrofitting and replacement of air pollution control devices installed to comply with the MACT standard is not to be considered as a cost of reconstruction. As shown below, this principle has long been codified in the RCRA subtitle C rules. We also stated in the administrative record to the 1999 HWC MACT rule that we meant for the same principle to apply here.

The RCRA subtitle C rules have long included the same cost test for determining when reconstruction occurs as is found in the General Provisions. In 40 CFR 270.72(b) we use the definition of reconstruction in a context directly analogous to whether new source status is triggered. This section defines when changes to an interim status RCRA facility are so extensive as to amount to reconstruction, causing a source to be subject to the more stringent standards for fully permitted facilities. The rules state, however, that this reconstruction cost test does not apply to units that are added due to the need to comply with a new RCRA rule. Section 270.72(b)(7). We initially proposed this principle for boilers and industrial furnaces burning hazardous waste (see 52 FR at 17013 (May 6, 1987)), but later codified the policy for all RCRA facilities in order that the principle—new units added to meet new regulations are not to be considered in applying the reconstruction cost test—apply generally. 56 FR at 7186 (Feb. 21, 1991). In addition, the RCRA rules (as amended in a 1998 rulemaking) further state that “changes necessary to comply with standards under 40 CFR Part 63 subpart EEE (the hazardous waste combustor MACT standards)” are not to be considered as reconstruction costs for purposes of RCRA. Section 270.72(b).

This provision was added specifically to ensure that the costs of coming into compliance with the MACT standards incurred by hazardous waste combustion sources were not to be considered in applying the reconstruction cost test. 63 FR at 33805 (June 19, 1998).

With these existing rules establishing our approach, we intended to apply the same principle in determining which costs were to be included within the reconstruction cost test used for determining applicability of new source standards for hazardous waste combustors. We also reiterated that these costs would not be considered as reconstruction costs in the RCRA context, emphasizing that this approach avoided any potential conflict between the CAA and RCRA regimes (implying that the principle regarding reconstruction costs was meant to apply in both contexts). US EPA, *Response to Comments Background Document, Vol. 1: Miscellaneous Standards*, pp. 56–7.

To clarify our intent, today we add the following sentence to the end of § 63.1206(a)(3) New or reconstructed sources: “The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source’s compliance date, are not considered to be reconstruction costs.”

As with the definition of affected source, this clarifying change regarding the reconstruction test, is needed to further the purpose of section 112(n)(7) of the CAA. This section calls for integration of the standards under both CAA and RCRA programs to the extent practicable (consistent with the requirements of section 112). Here, as just explained, longstanding RCRA practice is not to include costs of new units needed to comply with new regulatory standards as reconstruction costs. It is “practicable” (section 112(n)(7)) to carry this administrative principle over into the CAA regime for RCRA sources. As with the definition of affected source, this action is therefore not precedential for any non-RCRA source category.

Part Two: Technical Corrections

I. What Is the Purpose of This Section?

This final rule also makes three technical corrections to the Hazardous Waste Combustor NESHAPS promulgated on September 30, 1999 (64 FR 52828). First, if you use data in lieu of your initial comprehensive performance test, you must commence a comprehensive performance test within five years of the commencement date of the test from which the data were

obtained. Second, you are required to submit your continuous monitoring system (CMS) evaluation test plan rather than the evaluation plan for review and approval. Third, if you comply with the standards early, you begin calculating continuous monitoring system rolling averages at the time you elect to begin complying with the standards.

II. The Deadline for Conducting the Subsequent Comprehensive Performance Test After Using Data in Lieu of the Initial Performance Test Is Corrected

Section 63.1207(d)(1) inadvertently requires you to commence the subsequent comprehensive performance test within 61 months of the date six months after the compliance date if you submit data in lieu of the initial comprehensive performance test. This is incorrect. As discussed in the preamble (see 64 FR at 52917–18), your subsequent comprehensive performance test must commence within five years of the commencement date of the test from which you are using data in lieu of the initial comprehensive performance test. For example, if you commence an emissions test on September 30 2001, one year prior to the compliance date, and the results of that test can be used in lieu of the initial comprehensive performance test to demonstrate compliance with Subpart EEE, you must commence your subsequent comprehensive performance test within five years of that date, September 30, 2006.

For the reasons discussed above, we revise § 63.1207(d)(1) to make it consistent with the preamble.

III. The Confusion Between Continuous Monitoring System Evaluation Plan and Evaluation Test Plan Is Corrected

Sections 63.1207(e)(1) and (e)(2) inadvertently require you to submit a continuous monitoring system (CMS) evaluation plan for review and approval at least one year prior to the scheduled date of the CMS performance evaluation. What we actually intended was to require you to submit the CMS evaluation test plan, for review and approval. The CMS evaluation test plan describes the actual testing necessary to demonstrate calibration, minimization of malfunctions, and how the CMS will meet the required performance specifications.

The CMS evaluation plan implements your CMS quality control program and specifies how a source will maintain calibration of the CMS and minimize malfunctions. As required by Subpart EEE, you must keep the CMS evaluation plan on record for the life of the source

and make the plan available for inspection upon request by the Administrator. As we correct in today's notice you need not submit the CMS evaluation plan for review and approval.

We revise §§ 63.1207(e)(1) and (e)(2) accordingly.

IV. Procedures to Begin Calculating Continuous Monitoring System Rolling Averages Is Corrected for Sources That Comply Early

The September 30, 1999 Final Rule requires you to begin recording one-minute continuous emission monitor (CEM) and continuous monitoring system (CMS) values by 12:01 a.m., hourly rolling average values by 1:01 a.m., and twelve hour rolling averages by 12:01 p.m.. See §§ 63.1209(a)(6)(i) and (b)(5)(i). Although not explicitly written, we intended this provision to apply to you on the regulatory compliance date (i.e., three years after Final Rule promulgation). We have since determined that there could be situations where you would choose to voluntarily comply with the MACT standards before the compliance date. In such situations, the requirement for you to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, is inappropriate.

Today we are correcting the regulatory language in §§ 63.1209(a)(6)(i) and (b)(5)(i) in order to clarify that: (1) The requirement to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, applies only to sources that begin complying with the MACT standards on the regulatory compliance date; and, (2) if you elect to comply early with the MACT standards, you must simply begin recording CEM and CMS rolling averages at the time at which you elect to begin complying with the MACT standards. We believe this correction is prudent because of our desire to promote the concept of early compliance.

Part Three: Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an

opportunity for public comment.¹ EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely clarifies certain requirements and provides technical corrections (corrects errors) to the Hazardous Waste Combustors NESHAP Final Rule (64 FR 52828, September 30, 1999). The final rule was subject to notice and comment, and the clarified regulatory language reflects the Agency's views already set out during the rulemaking and in past Agency practice. Thus, notice and public procedure for this action are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Part Four: How Is the Program Delegated Under the Clean Air Act?

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR 52991).

Part Five: Analytic and Regulatory Requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding, see Section I above, that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Part Three: Good Cause Exemption), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the

¹ The good cause exemption in 5 U.S.C. 553 (b) applies here, even though this is a rulemaking otherwise subject to the procedural standards set out in section 307 (d) of the Clean Air Act. See CAA section 307 (d) (1) (final sentence).

national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This interpretive clarification and technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 30, 1999, **Federal Register** notice.

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 9, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 31, 2000.

Michael Shapiro,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1201 is amended by revising the definition of "Hazardous waste incinerator" in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste incinerator means a device defined as an incinerator in § 260.10 of this chapter and that burns hazardous waste at any time. For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.

* * * * *

3. Section 63.1206 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(3) * * *

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(3)(ii) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

4. Section 63.1207 amended by revising paragraphs (d)(1), (e)(1)(i)

introductory text, (e)(1)(i)(A), (e)(1)(ii), and (e)(2) to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(d) * * *

(1) *Comprehensive performance testing.* You must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

* * * * *

(e) * * *

(1) * * *

(i) *Comprehensive performance test.* You must submit to the Administrator a notification of your intention to conduct a comprehensive performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least one year before the performance test and performance evaluation are scheduled to begin.

(A) The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 9 months after receipt of the original plan.

* * * * *

(ii) *Confirmatory performance test.* You must submit to the Administrator a notification of your intention to conduct a confirmatory performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least 60 calendar days before the performance test is scheduled to begin. The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 30 calendar days after receipt of the original test plans.

(2) After the Administrator has approved the site-specific test plan and CMS performance evaluation test plan, you must make the test plans available to the public for review. You must issue a public notice announcing the approval of the test plans and the location where the test plans are available for review.

* * * * *

5. Section 63.1209 is amended by revising paragraphs (a)(6)(i) and (b)(5)(i) to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(6) * * *

(i) *Calculation of rolling averages initially.* The carbon monoxide or hydrocarbon CEMS must begin recording one-minute average values by 12:01 a.m. and hourly rolling average values by 1:01 a.m., when 60 one-minute values will be available for calculating the initial hourly rolling average for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute and hourly rolling average values within 60 seconds and 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), respectively, from the time at which compliance begins.

* * * * *

(b) * * *

(5) * * *

(i) *Calculation of rolling averages initially.* Continuous monitoring systems must begin recording one-minute average values by 12:01 a.m., hourly rolling average values by 1:01 a.m. (e.g., when 60 one-minute values will be available for calculating the initial hourly rolling average), and twelve-hour rolling averages by 12:01 p.m. (e.g., when 720 one-minute averages are available to calculate a 12-hour rolling average), for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute, hourly rolling average, and 12-hour rolling average values within 60 seconds, 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), and 720 minutes (when 720 one-minute values will be available for calculating the initial 12-hour hourly rolling average) respectively, from the time at which compliance begins.

* * * * *

[FR Doc. 00-28710 Filed 11-8-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301074; FRL-6751-7]

RIN 2070-AB78

Sulfentrazone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide and its major metabolite 3-hydroxymethyl sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on horseradish and sugarcane. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on horseradish and sugarcane. This regulation establishes a maximum permissible level for combined residues of sulfentrazone in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective November 9, 2000. Objections and requests for hearings, identified by docket control number OPP-301074, must be received by EPA on or before January 8, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Meredith Laws, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 305-9366; and e-mail address: laws.meredith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing

Categories	NAICS codes	Examples of potentially affected entities
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301074. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1221 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.